

ATTACHMENT 4

COPY OF THE ADOPTION, AS PUBLISHED IN THE NEW JERSEY REGISTER

(b) Upon receipt of a request for out of county fire service resources from the county fire coordinator, the regional fire coordinator shall notify the State fire coordinator as well as the county fire coordinators from the counties adjacent to the county from which the emergency incident or local fire emergency disaster originates.

5:75A-3.4 State coordination of fire service resources

(a) The State fire coordinator shall be empowered and authorized to issue immediately an order of deployment and require any unit of the fire service to respond, be recalled, standby or deploy any or all of its fire service resources to any location and for any period of the emergency incident or local fire emergency disaster whenever the State fire coordinator:

1. Makes the determination that fire service resources should be deployed to assist in fire suppression and related activities in another state during a fire emergency in that state; or

2. Makes the determination, in consultation with the regional fire coordinator and county fire coordinator for the county from which an emergency incident or a local fire emergency disaster originates, that the emergency incident or local fire emergency disaster requires the deployment of "[additional]" fire service resources "beyond those established in the local or county fire mutual aid plan".

i. The deployment order shall be sent to one or more regional or county fire coordinators requesting the specific number of units of the fire service. The regional and/or county fire coordinator shall implement the deployment order in a manner consistent with the county fire mutual aid plan for that county.

(b) During any emergency incident or local fire emergency disaster requiring deployment by the State fire coordinator, the assigned fire service resources shall be under the operational command of the incident commander at the site.

(c) In issuing an order of deployment, the State fire coordinator also shall be empowered and authorized to direct that any unit of fire service not respond to an emergency incident or a local fire emergency disaster, but remain on standby.

(d) If the State fire coordinator determines that the residents of a municipality or any portion thereof may not have sufficient fire service resources as a result of an order of deployment issued pursuant to this section to the unit of the fire service responsible for the fire protection of that municipality or that portion thereof, the State fire coordinator may issue an order of deployment to an adjacent or nearby unit of the fire service to provide necessary fire protection services, including the provision of fire service resources in the affected municipality or portion thereof.

(e) An order of deployment issued pursuant to this section shall be terminated by the State fire coordinator when he or she determines that the deployed unit of the fire service is once again able to provide adequate fire protection to the residents within its area of responsibility without the provision of fire services resources from other units of the fire service.

(f) An order of deployment shall remain in effect during the period of the emergency incident or local fire emergency disaster or until otherwise rescinded by the State fire coordinator, superseded by order of the Governor pursuant to P.L. 1942, c.251 (N.J.S.A. App. A:9-33 et seq.), or superseded by the determination that mutual aid should be provided in accordance with the Emergency Management Assistance Compact, P.L. 2001, c.249 (N.J.S.A. 38A:20-4 et seq.), or the Interstate Civil Defense and Disaster Compact, N.J.S.A. 38A:20-3.

(g) Upon the issuance of an order of the Governor pursuant to P.L. 1942, c.251 (N.J.S.A. App. A:9-33 et seq.), the State fire coordinator shall coordinate all fire resources in accordance with the State Emergency Operations Plan.

(h) If deemed necessary, and if the emergency incident or local fire emergency disaster continues to exist, the State fire coordinator may reinstate any previously issued order deployment or any portion of any such order of deployment.

(i) The State fire coordinator may modify the terms of an order of deployment issued to a unit of the fire service in order to respond immediately to a current or developing emergency incident or local fire emergency disaster or to provide adequate fire protection to a

municipality or any portion thereof impacted by the order of deployment, including, but not limited to, reducing or increasing the number of deployed fire service personnel, emergency equipment or emergency vehicles.

(j) The State fire coordinator shall maintain a liaison with the supervisory representative of the forest fire service in deploying fire service resources and coordinating protection activities during wildfire emergency incidents pursuant to N.J.S.A. 13:9-1 et seq.

5:75A-3.5 Enforcement of order of deployment

(a) Any State or local law enforcement agency or officer may enforce an order of deployment issued by the State fire coordinator pursuant to this chapter.

(b) If the State fire coordinator shall determine that such enforcement is essential in order to facilitate the immediate response to an emergency incident or local fire emergency disaster, he or she shall so notify any State or local law enforcement agency or officer and that agency or officer shall forthwith enforce that order of deployment.

5:75A-3.6 Violations; penalties; hearings

(a) Any person who knowingly and willfully violates, causes to violate, hinders, or otherwise interferes with an order of the State fire coordinator issued pursuant to this chapter shall be liable to a penalty of not more than \$10,000 for each violation.

(b) Any person aggrieved by an order imposing a penalty pursuant to this chapter shall be entitled to an administrative hearing.

1. Any person who wishes to appeal a penalty order shall file an application for an administrative hearing with the Division by the 15th day after receipt by the person of the penalty notice.

2. The application for an administrative hearing shall not stay or otherwise delay the implementation of an order of deployment issued by the State fire coordinator pursuant to this chapter.

(c) If the administrative penalty order has not been satisfied by the 30th day after its issuance and an application for an administrative hearing has not been made, the penalty may be recovered in the name of the Commissioner of Community Affairs pursuant to the "Penalty Enforcement Law of 1999," P.L. 1999, c.274 (N.J.S.A. 2A:58-10 et seq.).

ENVIRONMENTAL PROTECTION

(a)

ENVIRONMENTAL REGULATION

AIR QUALITY MANAGEMENT ELEMENT

Air Pollution Control

Prevention of Air Pollution from Consumer Products

Adopted Amendments: N.J.A.C. 7:27-24.1 through 24.7; and 7:27A-3.10

Adopted New Rules: N.J.A.C. 7:27-24.3 and 24.8 through 24.12

Adopted Repeal: N.J.A.C. 7:27-24.6

Proposed: September 15, 2003 at 35 N.J.R. 4241(b).

Adopted: April 7, 2004 by Bradley M. Campbell, Commissioner, Department of Environmental Protection.

Filed: April 8, 2004 as R.2004 d.182, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 13:1B-3(e), 13:1D-9 and 26:2C-1 et seq., in particular 26:2C-8.

DEP Docket Number: 18-03-08/247.

Effective Date: May 3, 2004

Operative Date: June 6, 2004.

Expiration Dates: Exempt, N.J.A.C. 7:27;

November 9, 2004, N.J.A.C. 7:27A.

ADOPTIONS

The New Jersey Department of Environmental Protection (the Department) is adopting amendments to N.J.A.C. 7:27-24, Prevention of Air Pollution from Consumer Products, the Department's rules governing the standards, emission limits and equipment specifications for consumer products, including portable fuel containers, and making related amendments to the penalty code revisions at N.J.A.C. 7:27A-3. These amendments will help the State continue to make progress towards attainment of the one-hour ozone standard.

The comments the Department received on the proposed amendments are summarized and responded to below in the section with the heading, "Summary of Public Comments and Agency Responses."

Summary of Hearing Officer's Recommendation and Agency Response:

The Department held a public hearing on November 13, 2003, at its headquarters at 401 East State Street, Trenton, New Jersey to provide interested parties the opportunity to present comments on the Department's proposed amendments. The public comment period closed on November 14, 2003. Bob Stern, Acting Chief of the Bureau of Air Quality Planning, served as the Hearing Officer at the public hearing. After reviewing the comments presented at the hearing and the written comments received by the Department, the Hearing Officer recommended that the proposed amendments be adopted with the changes described below in the Summary of Public Comments and Agency Responses and in the Summary of Agency-Initiated Changes. The Department has accepted the Hearing Officer's recommendation.

The hearing record is available for inspection in accordance with applicable law by contacting:

Department of Environmental Protection
Office of Legal Affairs
ATTN: Docket No. 18-03-08/247
401 East State Street
PO Box 402
Trenton, New Jersey 08625-0402

Copies of this adoption document are also available from the Department's website at www.state.nj.us/dep/aqm, where Air Quality Management rules, proposals, adoptions and SIP revisions are posted.

Summary of Public Comments and Agency Responses:

The Department received oral and written comments on the proposed amendments from the following persons:

1. Catherine C. Beckley, Cosmetic, Toiletry and Fragrance Association
2. Randy Minniear, State Street Associates on behalf of the National Paint & Coatings Association
3. Eileen Moyer, Reckitt Benckiser Inc.
4. Joseph T. Yost, Consumer Specialty Products Association

Comments are arranged by section. If a comment does not pertain to a specific section of the rule, it has been placed under the "General Comments" category. At the end of each comment, the specific commenter(s) is referenced by placing the above numbers in parentheses. The comments are as follows:

General Comments

1. COMMENT: Two commenters expressed general support for the proposed rules. (3, 4)

RESPONSE: The Department appreciates the commenters' support for the proposed amendments and new rules.

2. COMMENT: Two commenters stated they support the Department's efforts to adopt consumer products rules that are uniform with the consumer product rules of other states in the Ozone Transport Region. All four commenters supported the proposed rules' consistency with the Ozone Transport Commission's (OTC) "Model Rule for Consumer Products." One or more of the commenters noted consistency of the definitions, VOC standards, exemptions and effective dates. One commenter stated this consistency is extremely important and fulfills one of the goals of the OTC and industry stakeholders. Another commenter stated this consistency is critical in order to ensure that manufacturers can market their products throughout the United States without impacting interstate commerce. One commenter stated that this consistency will ensure the harmonization of regulatory standards for consumer products in New Jersey and throughout the 12 other jurisdictions that comprise the Ozone Transport Region. (1, 2, 3, 4)

RESPONSE: The Department appreciates the commenters' support for the proposed amendments and new rules. The Department actively participated in the development of the OTC model rules with other OTC states to ensure regional consistency. The Department believes New Jersey's adopted

ENVIRONMENTAL PROTECTION

Consumer Products rules achieve a reasonable level of consistency with the OTC Model Rule for Consumer Products, the OTC Model Rule for Portable Fuel Container Spillage Control and with the consumer product rules and portable fuel container rules of other OTC states.

3. COMMENT: One commenter stated the proposed rules will provide a fair regulatory framework that will protect the environment and allow manufacturers to produce and sell widely-used consumer products in New Jersey and throughout the Ozone Transport Region. (4)

RESPONSE: The Department agrees with the commenter.

N.J.A.C. 7:27-24.2 Applicability

4. COMMENT: At N.J.A.C. 7:27-24.2(d)5iii, the term "and" should be replaced with the term "or," where the rule states "... sold in units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces; ..." The commenter provided no basis in support of this change. (2)

RESPONSE: N.J.A.C. 7:27-24.2(d)5iii as adopted exempts certain non-aerosol adhesives from the requirements of N.J.A.C. 7:27-24 if they are sold in units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces. Most of the other states, including California, use the term "and." California inspectors could not determine if a product was subject to its consumer product rules when it was typically being sold in 11-12 fluid ounce tubes, which might weigh more than one pound depending upon the product's density. California decided to use the term "and" so that fewer products would be exempt from its consumer product rules. For this reason, and to be consistent with most of the other states, the Department has retained use of the term "and" on adoption.

N.J.A.C. 7:27-24.3(e) Product-in-compliance statement in shipping documentation

Comments 5, 6 and 7 below pertain to the same issue and are responded to collectively below.

5. COMMENT: Three commenters recommended that the Department remove proposed N.J.A.C. 7:27-24.3(e), which requires all invoices, bills of lading or shipping documents provided to a distributor or retailer in New Jersey to state that the product complies with the New Jersey VOC limits. All three commenters stated that this proposed requirement is not included in the OTC Model Rule for Consumer Products and no other state requires such state-specific designations. One commenter stated that it creates a New Jersey-only standard. One commenter stated that it is contrary to the Department's stated goal of adopting regionally consistent regulations. (1, 3, 4)

6. COMMENT: One commenter stated that from a business practice perspective, it would be extremely difficult to ensure that the shipping document compliance statement, proposed at N.J.A.C. 7:27-24.3(e), would refer directly to New Jersey. Manufacturers often employ regional distributors that ship within the Ozone Transport Region (OTR). Because two states that border New Jersey—Pennsylvania and New York—have consumer product rules based on the OTC Model Rule for Consumer Products, it would be very difficult to prevent New York products (with the same VOC limit as New Jersey) from entering New Jersey with New Jersey-specific invoices. Another commenter stated that given New Jersey's close proximity to the OTR States that have already promulgated final consumer products regulations based on the OTC Model Rule for Consumer Products, nationally marketed products will comply with the VOC standards set forth in the OTC Model Rule and, thus, there is no need to include the shipping document compliance statement requirement. (1, 4)

7. COMMENT: Two commenters stated that the shipping document compliance statement requirement proposed at N.J.A.C. 7:27-24.3(e) places an unnecessary or significant administrative burden on manufacturers. One commenter stated that this requirement would provide no measurable environmental benefit. One commenter stated that this requirement would require companies to modify the programs they use to generate shipping documents. One commenter stated that this requirement provides no benefit to the purchaser of products and that the commenter's customers do not use shipping documents as a means of determining whether customers are being supplied compliant products. According to this commenter, shipping documents do not go to those individuals who are responsible for ensuring that compliant products are placed on store shelves or purchased for use in an institution; it is common industry practice to provide customers with hold harmless agreements that hold the manufacturer responsible for ensuring that compliant products are being supplied to the manufacturer's customers; retailers and distributors aggressively hold manufacturers to these agreements; and this has been a long-standing industry practice that has worked well over

the years, as not following these agreements will jeopardize good customer relations and potential future sales. (3, 4)

RESPONSE TO COMMENTS 5 THROUGH 7: Proposed N.J.A.C. 7:27-24.3(e) pertained to consumer products shipped to New Jersey for sale and use in New Jersey and required each manufacturer or distributor shipping these products to New Jersey to include on the shipping document it sends to a distributor or retailer a statement that the products shipped are in compliance with N.J.A.C. 7:27-24. The Department added this provision to the proposal, even though it was a departure from the OTC Model Rule for Consumer Products, because the Department believed this provision would help assure that CFCPs and PFCs and spouts sold in New Jersey for sale and use in New Jersey would be compliant with subchapter N.J.A.C. 7:27-24, to protect retailers from being liable for receiving non-compliant products and to be consistent with the proposed amendments to N.J.A.C. 7:27-23, Prevention of Air Pollution from Architectural Coatings.

However, for many of the reasons stated above, the commenters convinced the Department that this proposed provision would not substantially further compliance. In addition, the Department believes that the adopted provisions at N.J.A.C. 7:27-24.2(h) will provide sufficient protection of retailers being shipped non-compliant products. Therefore, in the adopted rules, the Department deleted proposed N.J.A.C. 7:27-24.3(e), removed references to this citation from N.J.A.C. 7:27-24.2(c) and N.J.A.C. 7:27A-3.10(m)24, and recodified N.J.A.C. 7:27-24.3(f) and (g) as (e) and (f), respectively. The deletion of N.J.A.C. 7:27-24.3(e) on adoption does not affect the shipping documentation requirements at N.J.A.C. 7:27-24.2(f) and 24.3(b)2 for products shipped from New Jersey or through New Jersey to destinations for use outside of New Jersey.

N.J.A.C. 7:27-24.5(a) through (c) Registering chemically formulated consumer products

8. COMMENT: Two commenters opposed the "registration" and "re-registration" requirements proposed at N.J.A.C. 7:27-24.5(a) through (c). Two commenters stated these proposed requirements are inconsistent with the OTC Model Rule. One commenter stated the proposed requirements differ from the current reporting requirements in California and other states and should be deleted. One commenter stated that these requirements run counter to the trend by states to decrease the collection of such data. Two commenters suggested that the Department take the approach they claimed was taken by the OTC model rule, California and four OTC states, which is that, upon 90 days written notice from the Department, a company must produce information specified by the Department on an as-needed basis. (1, 3, 4)

RESPONSE: The OTC Model Rule and the consumer products rules of New York, Pennsylvania, Delaware and California require all manufacturers to submit the explanation of the code for the date of manufacture. In order to submit an explanation of the code for the date of manufacture, the manufacturer would have to submit its name and mailing address. This is essentially what N.J.A.C. 7:27-24.5(a) required for registrations. The only difference is that N.J.A.C. 7:27-24.5(a)4 required the manufacturer to also submit the phone number of a contact person and the CFCP categories to which the manufacturer's CFCPs belong, two pieces of information that enhance the Department's enforcement activities, that are already in existing Subchapter 24, and that are already required by the Federal consumer products rule (40 CFR 59.209(d)) if the distributor is not named on the product label. Regarding variances, alternative control plans (ACPs) and innovative product exemptions (IPEs), the Department expects compliance via these options to occur only infrequently; therefore, the additional information required for variances, ACPs and IPEs would not be included in nearly all registrations and re-registrations.

The commenters appear to mistakenly believe that under the OTC Model Rule for Consumer Products and the rules of other states the state must request a manufacturer to submit the explanation of the code for the date of manufacture, instead of this being a required submission. The OTC Model Rule for Consumer Products requires this submission; this submission is not upon request. The OTC Model Rule for Consumer Products at 6(b) states "if a manufacturer uses a code indicating the date of manufacture... an explanation of the code must be filed with the OTC State no later than twelve months prior to the effective date of the applicable standard..." Also, as stated above, the consumer products rules of New York, Pennsylvania, Delaware and California (California has a slightly different requirement for antiperspirants and deodorants) require manufacturers to submit the explanation of the code for the date of manufacture prior to the effective date of the applicable standard, not within 90 days upon request as the commenters stated.

The Department adopted N.J.A.C. 7:27-24.5(a) through (c) as proposed.

9. COMMENT: Two commenters claimed the information collected by submitting the registration or re-registration as per proposed N.J.A.C. 7:27-24.5(a) through (c) would be a duplicative report and effort for companies, since it is the same information the Department requires to be submitted with the explanation of the date codes. Dropping the registration requirement would allow Department staff to work on implementing the rule, instead of collecting duplicative information. (1, 4)

RESPONSE: The Department disagrees with the commenters, who appear to have misunderstood the rule proposal. N.J.A.C. 7:27-24.5(a) as proposed requires a manufacturer to provide specifically listed information when it electronically registers or re-registers its CFCPs. N.J.A.C. 7:27-24.5(e) as proposed requires a manufacturer to include the explanation of the code for the date of manufacture as part of this electronic registration or re-registration. The Department's intention is for all of this information to be provided in a single submittal. The rule does not require the manufacturer to submit the explanation of the code for the date of manufacture at one time and the other registration information at another time. The Department adopted N.J.A.C. 7:27-24.5(a) through (c) as proposed.

10. COMMENT: One commenter stated that there is no benefit to require companies to indicate the regulated product categories they market or to re-register if new categories are added to their product lines. One commenter stated that having to provide the list of CFCP categories does not add anything. One commenter stated that only those companies that are subject to these regulations are required to submit the key for their date-code system; that, therefore, the Department will have a listing of companies that enforcement officials can use to determine compliance; that the appropriate contact information will be included in the date-code registration, so the Department will receive the information it needs to determine those companies that are subject to the regulations; and that the manufacturer's name is on the label of products that are being marketed, so it would be a simple task to match the manufacturer's name on the label to the registration list if the compliance of a product is being questioned. One commenter stated that by limiting registrations and re-registrations to date code systems, that since date-code systems do not change that frequently, the Department would not have to deal with significant unnecessary paperwork that does not provide a benefit to the regulatory process. (3, 4)

RESPONSE: The Department's existing consumer products rules already require manufacturers to list their product categories as part of the registration submitted to the Department. Manufacturers have been submitting product categories in their registrations since 1996. The rules as adopted makes no change to this substantive requirement but, rather, merely changes the means of registration submittal. Also, the Federal consumer products rule, at 40 CFR 59.209(d), requires product categories to be submitted as part of the Initial Notification Report. The electronic registrations and re-registrations will enhance enforcement, thus benefiting the environment, by making manufacturer names, regulated CFCP categories, applicable VOC content limits and manufacture date-code explanations readily available to enforcement staff via a shared Department database or electronic spreadsheet, which will make it easier to identify the CFCP categories to which a company's products belong.

11. COMMENT: One commenter stated that the registration and re-registration requirements would impose needless administrative burdens on the Department's staff and on manufacturers. One commenter stated that by restricting the registration and re-registration to date-code information, the Department can reduce its administrative burden. (3, 4)

RESPONSE: The Department agrees that there will be a slight increase in administration by manufacturers, at least initially, to comply with the electronic registration and re-registration requirements of these adopted amendments. However, the Department has reduced this anticipated burden by developing a standard registration/re-registration form at www.state.nj.us/dep/bagp. Also, the electronic database or spreadsheet of registrations the Department will develop may benefit the regulated manufacturers in that if Subchapter 24 were amended in the future, the Department could use this electronic database or spreadsheet to perform outreach. Also, compared to New Jersey's existing consumer products rules, the only new information the adopted rules require to be submitted is the explanation of the code of the date of manufacture. Further, the adopted rules require a manufacturer to submit the explanation (or key) only of its code for the date of manufacture, not of the company's entire date-code system. The additional administrative burden on the Department would involve only the creation of a standard electronic registration/re-registration form and maintenance of the electronic spreadsheet or database.

N.J.A.C. 7:27-24.5(b) and (e) Explanation of code for date of manufacture

12. COMMENT: Two commenters stated that since the Department requires the submission of date-codes, the State will receive not only the date-code, but also other information such as product categories, brand names, names of marketing companies, plant location and batch number. One commenter stated this additional information is generally part of the information conveyed by the date-codes. (1, 4)

RESPONSE: The Department's proposed rule at N.J.A.C. 7:27-24.5(e) requires a CFCP manufacturer to submit the date-code explanation to the Department. The Department's proposed rule at N.J.A.C. 7:27-24.1 clearly defines "date-code" as "a code indicating the day, month and year on which a product was manufactured, filled or packaged." Therefore, by definition, date-code does not include product categories, brand names, marketing companies, manufacturing plant location, batch number or any other information the manufacturer may have date-coded. The Department adopted N.J.A.C. 7:27-24.5(e) as proposed.

13. COMMENT: Two commenters urged the Department to classify date-code information as confidential business information, as set forth at N.J.A.C. 7:27-1.6 through 29 and protected under applicable New Jersey law, without requiring a special request by the manufacturer. The commenters stated the following: date-code information is highly proprietary information; in addition to providing information about the date of manufacture, date-codes generally convey additional information such as the plant location and batch number and this data are an integral part of many manufacturers' product stewardship programs; and if not properly protected, this highly confidential information could be used by competitors to determine the sales trends for specific products (for example, by conducting surveys of products on retail store shelves). The commenters suggested that the New Jersey rules should either grant date-code submissions confidential business information status, or at least include a provision requiring the Department to notify a company of a third-party request for date-code information and allow a company to demonstrate why such information should be confidential before the Department releases the requested information. (1, 4)

RESPONSE: The Department's proposed rules do not require a manufacturer to submit its explanation of any code other than for the date of manufacture. Please see the Response to Comment 12 above. The Department's proposed rules at N.J.A.C. 7:27-24.5(b) prohibit any information, including the explanation of the code for the date of manufacture, submitted as part of the registration or re-registration from being claimed confidential. The Department recommends that, if a manufacturer wants to keep the explanation of other coded information (other than the explanation of the code for the date of manufacture) confidential, that the manufacturer not send the explanation of the other coded information to the Department. Under New Jersey law, the explanation of the code for the date of manufacture is not entitled to confidential information status. Accordingly, the Department has adopted N.J.A.C. 7:27-24.5(b) as proposed.

14. COMMENT: One commenter suggested that to protect the confidentiality of information contained in the date-code, the Department should replace the proposed requirement for mandatory electronic submittal of the date-code explanations as part of the registration or re-registration at proposed N.J.A.C. 7:27-24.5(e) with a requirement for separate electronic submittal of the date-code explanation, unless such electronic submittal would impose a hardship on the manufacturer, and with a requirement that the Department treat the information about a manufacturer's products as confidential business information. The commenter stated these changes would provide the necessary protection of highly sensitive business information and would conform to the Department's innovative proposal to allow manufacturers to provide this information in electronic format. (4)

RESPONSE: No purpose would be served by the manufacturer's making two separate electronic submittals. As the Department stated in the Response to Comment 13 above, under New Jersey law the manufacturer's explanation of the code for the date of manufacture is not entitled to confidential information status and, as the Department stated in the Response to Comment 12 above, the proposed rules do not request a manufacturer to submit its explanation of any code other than for the date of manufacture. Accordingly, the Department has adopted N.J.A.C. 7:27-24.5(e) as proposed.

N.J.A.C. 7:27-24.6 Chemically formulated consumer products: recordkeeping and reporting

Comments 15 through 18 address related or similar questions and one responded to collectively below.

15. COMMENT: Three commenters raised objections to the Department's proposed recordkeeping requirements. These requirements increase the period

that manufacturers would have to retain manufacturing records from three years to five years. Two commenters stated the expansion of the recordkeeping requirements to five years is inconsistent with the OTC model rule, California's rule, and the United States Environmental Protection Agency's (EPA's) national consumer product rule, and that it exceeds the standard legal and regulatory retention periods followed by industry and required under other regulations. Two commenters recommended the record retention requirement be changed to three years. Two commenters stated the five-year record retention requirement is a vestige of the State's 1995 consumer product rules. One commenter stated this recordkeeping requirement will result in confusion to the regulated community. (1, 3, 4)

16. COMMENT: Two commenters stated that the proposed five-year record retention requirement will be burdensome to large and small companies. (1, 3)

17. COMMENT: One commenter stated the proposed recordkeeping requirement is at variance with the Department's stated goal of "... minimizing the economic impact to manufacturers ... by ... minimizing reporting and recordkeeping ... requirements." (4)

18. COMMENT: One commenter stated that the proposed recordkeeping requirement will not provide any benefit to the Department; greater than 99 percent of products produced on any given day will no longer be on a retail store shelf in three years; since the Department desires product records for compliance verification purposes, a three-year retention period is sufficient; and if the Department finds a compliance problem with a product, it will be within three years, with active enforcement, except for some very small "mom and pop" shops. (3)

RESPONSE TO COMMENTS 15 THROUGH 18: The Department's proposal required five-year retention periods for four types of documents related to CFCPs.

The first type of document is shipping documentation for CFCPs or PFCs to be sold in New Jersey. Proposed N.J.A.C. 7:27-24.3(e) required manufacturers, distributors and retailers to retain this shipping documentation for five years. However, as stated in the Department's Response to Comments 5 through 7, proposed N.J.A.C. 7:27-24.3(e) was not adopted; and, therefore, this recordkeeping requirement is no longer applicable and not included in the adopted amendments. Therefore, the adopted amendments contain no record retention period requirement for any shipping documentation.

The second type of document is compliance test records. Proposed N.J.A.C. 7:27-24.6(d) required manufacturers to retain compliance test records for five years, increased from three years in the existing rule. The Department retained this proposed requirement in the adopted amendments. The commenters are correct in asserting that this requirement differs from the OTC Model Rule for Consumer Products and the rules of the other OTC states. The Department disagrees with the commenter's statement that because nearly all of a particular CFCP is removed from store shelves within three years, manufacturers need to retain compliance test records for only three years. The Department believes that a five-year retention period of compliance test records is needed to give the Department's enforcement staff adequate time to complete any enforcement investigations. The Department believes the need to retain these records for enforcement activities to protect public health outweighs industry's request for consistency with the OTC Model Rule and the rules of the other OTC states.

The third type of document is manufacturer information which the Department needs to collect in order to perform a survey of CFCPs sold. In order to reduce the burden to manufacturers and to adhere to the Department's goal of minimizing companies' recordkeeping requirements, the Department has changed the proposal's five-year requirement to three years at N.J.A.C. 7:27-24.6(d) in the adopted amendments.

The fourth type of document is limited survey information for CFCPs that are not included in any of the regulated CFCP categories listed in Table 1 at proposed N.J.A.C. 7:27-24.4(a), but that contain greater than five percent by weight VOC having a vapor pressure or sum of partial pressures of organic substances equal to or greater than 0.02 pounds per square inch, absolute. In order to reduce the burden to manufacturers and to adhere to the Department's goal of minimizing companies' recordkeeping requirements, the Department changed the proposal's five-year requirement to three years at N.J.A.C. 7:27-24.6(d) in the adopted amendments.

Summary of Agency-Initiated Changes:

In addition to the changes in response to comments explained above, the Department is making changes to the following provisions:

N.J.A.C. 7:27-24.4(k)i, ii and iii were incorrectly codified in the proposal and are recodified correctly in these adopted amendments to N.J.A.C. 7:27-24.4(k)1, 2 and 3, respectively.

At N.J.A.C. 7:27-24.7(c)1 the Department corrects an error in the proposal. As proposed, N.J.A.C. 7:27-24.7(c)1 required certain records needed to demonstrate compliance to be retained for only three years. In the proposal, the Department intended to require at both N.J.A.C. 7:27-24.6(d) and 24.7(c)1 that compliance test records must be retained for at least five years, and not three years, to give the Department's enforcement staff adequate time to complete any enforcement investigations. Accordingly, the Department is changing N.J.A.C. 7:27-24.7(c)1 on adoption to require compliance test records for chemically formulated consumer products (CFCPs) to be kept for at least five years.

Adopted N.J.A.C. 7:27-24.6 sets forth the various recordkeeping requirements for a CFCP manufacturer. N.J.A.C. 7:27-24.6(a) requires a CFCP manufacturer to retain the results of any testing performed to demonstrate compliance with a VOC content limit. N.J.A.C. 7:27-24.6(d) requires a manufacturer to retain for five years those records needed to demonstrate compliance.

Adopted N.J.A.C. 7:27-24.7 sets forth the testing requirements a manufacturer must follow to demonstrate that a CFCP complies with a VOC content limit. N.J.A.C. 7:27-24.7(a) requires a CFCP to be tested using the test methods listed in N.J.A.C. 7:27-24.7(b) through (g). N.J.A.C. 7:27-24.7(c) describes a test method that relies on records of the amounts of constituents used to make the CFCP. As proposed, N.J.A.C. 7:27-24.7(c)1 required these records be retained for at least three years. However, because the record retention provision relates to compliance documents, the Department intended the retention period to be five years, rather than the three years stated in the proposal.

Although the five-year document retention provision at N.J.A.C. 7:27-24.6(d) and 24.7(c)1 differs from the three-year retention requirement of the OTC Model Rule, the Department believes the need to retain records demonstrating compliance in order that the Department can undertake appropriate enforcement activities to protect public health outweighs industry's request for consistency with the OTC Model Rule and the rules of the other OTC states. Survey information, which these adopted rules require be retained for only three years, is not as important for enforcement investigations as compliance test records.

Moreover, it is the policy of the Department's Air Quality Program to require compliance test records to be retained for five years. For example, the Department's Air Quality Program rules at N.J.A.C. 7:27-8.9(g), 16.5(j), 16.8(j) and 16.22(a) require that compliance test records be retained for five years. However, at proposed N.J.A.C. 7:27-24.7(c)1, the Department erroneously required a three-year compliance test record retention period. The Department corrects this error by replacing the term "three" with the term "five" at N.J.A.C. 7:27-24.7(c)1 as adopted.

Federal Standards Analysis

Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65) require State agencies that adopt, readopt or amend State regulations which exceed any Federal standards or requirements to include in the rulemaking document a Federal standard analysis.

The Department has performed a comparison of the rules and amendments to N.J.A.C. 7:27-24, Prevention of Air Pollution from Consumer Products, to analogous Federal regulations, namely, CFR §§59.100 to 59.413, National Volatile Organic Compound Emission Standards for Consumer and Commercial Products. These Federal regulations have been promulgated pursuant to the Federal Clean Air Act and set forth the substantive Federal standards. Based on its review of Federal regulations, the Department has determined that the rules and amendments for CFCPs are more stringent than Federal standards. Since no Federal regulations exist for PFCs, the Department has determined that the rules for PFCs do not exceed Federal standards.

Policy Discussion

The new rules and amendments are needed to fulfill a requirement, imposed by USEPA pursuant to the Federal Clean Air Act, 42 U.S.C. §§7401 et seq., that New Jersey adopt sufficient control measures to address additional VOC (ozone precursor) emission reductions identified by USEPA as being needed for New Jersey in its State Implementation Plan (SIP) to attain the one-hour ozone standard by the mandated attainment dates of 2005 for the New Jersey portion of the Southern New Jersey-Philadelphia-Wilmington nonattainment area and 2007 for the New Jersey portion of the Northern New Jersey-New York City-Southwestern Connecticut nonattainment area. Therefore, adoption of these new rules and amendments is necessary for the State to comply with Federal requirements.

One of the options that the USEPA proposed to New Jersey and several other states was that the State work with the OTC to develop a regional strategy to reduce VOCs and NO_x in order to address the required emission reductions. OTR states were required to provide to the USEPA, by October 31, 2001, a SIP revision that identified the control measures to be adopted to address the required emission reductions. New Jersey complied with this requirement.

New Jersey worked with the OTC and other jurisdictions in the OTR to develop a set of control measures to meet the additional emission reduction requirements by the mandated attainment dates. The CFCP and PFC rules are two of the control measures identified by the OTC. The control measures were selected based on VOC inventory emissions, potential emission reductions, technological feasibility of the proposal and timeliness of potential implementation. The OTC found no other feasible measures that could substitute for CFCPs and PFCs and still meet the USEPA mandated emission shortfall requirement. The VOC emission reductions from these rules and amendments are expected to provide approximately 39 percent (half from CFCPs and half from PFCs) of the total VOC emission reductions from the five OTC VOC model rules.

Cost Benefit Analysis

The amendments for CFCPs would primarily impact manufacturers of products. In order to comply with the rules, manufacturers may have to reformulate some of their products to meet the rules' requirements or refrain from selling them in New Jersey for use in New Jersey. Distributors and suppliers will need to ensure proper distribution of products to the appropriate states. Also, potentially affected are retailers, businesses that supply ingredients and equipment to these manufacturers, businesses that use CFCPs and consumers.

As discussed in more detail in the proposal's Economic Impact, the estimated cost per unit ranges from no cost increase (net savings or no cost for various categories) to approximately \$0.60 per unit of product. The CARB economic analysis concluded that most manufacturers would be able to absorb the cost of the rules and amendments with no significant adverse economic impacts. In addition, the manufacturer may or may not choose to pass some or all of these costs on to the consumer. Based on the economic analysis, the Department does not anticipate any significant adverse effects on consumers.

Companies that supply raw materials for existing non-compliant products may experience a decline in demand for their products. On the other hand, those companies which supply solvents, other chemicals and equipment for use in reformulating CFCPs could potentially benefit from the rules and amendments as they experience an increase in demand for their products.

Distributors and retailers may be impacted if the potential increase in costs of products dampen demand for the products. The potential consumer impact analysis assumes that manufacturers, distributors and retailers pass on any additional compliance costs to the consumers. This may be conservative because the manufacture may absorb some or all of the cost of compliance. Based on the potential consumer impact analysis, the Department does not anticipate any significant adverse economic impacts for distributors and retailers.

Impacts to businesses that use CFCPs would be similar to the potential additional costs a consumer would experience as discussed in the consumer impact analysis. Based on the consumer impact analysis, the Department does not anticipate any significant adverse economic impacts for businesses who use CFCPs.

The Department anticipates the benefits of the rules and amendments to be an increase in the quality of life and protection of human health, the environment and agriculture. The Department expects the adopted rules and amendments to have a significant and positive environmental impact. The primary environmental benefit will be a reduction in the emission of VOCs, which are precursor emissions that lead to the formation of ground-level ozone. As discussed earlier, ground-level ozone is breathed by people and animals and comes into contact with crops and other vegetation, as well as man-made structures and surfaces. This exposure can cause a variety of adverse effects. The rules are also expected to reduce emissions of hazardous air pollutants and toxic substances. In addition, the rules will reduce particulate matter of 2.5 microns or less equivalent aerodynamic diameter (PM 2.5), some of which is created from VOC emissions. It is estimated that the adopted CFCP rules and amendments will achieve a 14.2 percent reduction of the entire consumer products VOC emissions inventory, beyond the current USEPA Federal rules, or a reduction of approximately 32 percent of the emissions from the categories being regulated. This equates to a VOC emission reduction of approximately 12 tons per day in 2007.

As discussed in the proposal's Economic Impact, the estimated cost-effectiveness of the rules and amendments for each product category ranges from no cost (and in some cases a net savings) to approximately \$7.73 per pound of VOC reduced. The estimated emission reduction-weighted average (ERWA) cost-effectiveness is \$1.15 per pound of VOC reduced or \$2,300 per ton of VOC reduced.

In addition to the environmental and health benefits, economic benefits, which are difficult to quantify, may also be realized. Owners and employees of businesses will enjoy the environmental, health and other social benefits of the new amendments. A reduction in air pollution will lead to healthier and more productive workers. The Department is adopting this rule to meet USEPA requirements. Failure to achieve these reductions could subject New Jersey to economic sanctions, which would adversely affect all businesses and taxpayers in the State.

Conclusion

In adopting these rules and amendments, the Department has balanced the need to protect the environment and the public health and to comply with the USEPA requirements against any economic impacts of the rule. Based on the research, surveys and evaluations done by CARB, the OTC and the Department, the Department has determined that these rules and amendments are achievable under current technology and are cost-effective. The Department has determined that establishing these adopted rules and amendments, even though more stringent than the Federal rule, is essential in order to meet the ozone precursor emission reduction requirements by the required attainment dates, and to protect the environment and public health. The states of Delaware, New York, and Pennsylvania have already adopted rules substantially equivalent to these New Jersey adopted rules.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 27 AIR POLLUTION CONTROL

SUBCHAPTER 24. PREVENTION OF AIR POLLUTION FROM CONSUMER PRODUCTS

7:27-24.1 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

"Adhesive" means a product that is used to bond one surface to another by attachment. This term does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate.

"Adhesive remover" means a product designed exclusively for the removal of adhesives, caulk and other bonding materials from either a specific substrate or a variety of substrates.

"Aerosol adhesive" means an adhesive that is an aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for hand-held application without the need for ancillary hoses or spray equipment.

"Aerosol product" means a product that incorporates a pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force. This term does not include pump sprays.

"Agricultural use" means the use of any pesticide or method or device for the control of pests in connection with the commercial production, storage or processing of any animal or plant crop. This term does not include the use of pesticides for any of the following uses, provided that the label on the packaging in which the pesticide is sold clearly indicates that the product is intended for one or more of the following uses, rather than for agricultural use:

1. Home use, that is, use in a household or the household's immediate environment;
2. Use in structural pest control;
3. Industrial use, that is, use for or in a manufacturing, mining, or chemical process, or use in the operation of a factory, processing plant or similar site; or
4. Institutional use, that is, use within the confines of, or on property of, or in the buildings used in the operation of, an institution, such as a hospital, school, library, auditorium, or office complex.

"Air freshener" means a product including, but not limited to, sprays, wicks, powders and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting, or deodorizing the air. This term does not include products that are used on the human body, products that function primarily as cleaning products, disinfectant products claiming to deodorize by killing germs on surfaces, or institutional/industrial disinfectants when offered for sale solely through institutional and industrial channels of distribution. This term does include spray disinfectants and other products that are expressly represented for use as air fresheners, except institutional and industrial disinfectants when offered for sale through institutional and industrial channels of distribution. To determine whether a product is an air freshener, all verbal and visual representations regarding product use on the label or packaging or in the product's literature and advertising may be considered. The presence of or representation about a product's fragrance and ability to deodorize resulting from surface application shall not constitute a claim of air freshening.

"All other forms" means all product forms for which no form-specific VOC standard is specified. Unless specified otherwise by the applicable VOC standard, this term includes, but is not limited to, solids, liquids, wicks, powders, crystals, and cloth or paper wipes (towelettes).

"Alternative control plan" or "ACP" means an emissions averaging program for chemically formulated consumer products, which provides a manufacturer with an alternative method to comply with the VOC content limits in Table 1 at N.J.A.C. 7:27-24.4(a), and which was issued in accordance with N.J.A.C. 7:27-24.4(i) and (j) by:

1. CARB pursuant to its consumer products regulations (including all amendments and supplements) at Title 17, Subchapter 8.5, Article 1, Section 94503.5 or Article 2, Section 94511 of the California Code of Regulations; or

2. The air pollution control agency of another state pursuant to its consumer product regulations if those consumer product regulations are based on the Ozone Transport Commission (OTC) "Model Rule for Consumer Products" dated November 29, 2001, including subsequent revisions.

"Antimicrobial hand or body cleaner or soap" means a cleaner or soap that is designed to reduce the level of microorganisms on the skin through germicidal activity. This term includes, but is not limited to, antimicrobial hand or body washes/cleaners, food handler hand washes, healthcare personnel hand washes, pre-operative skin preparations, and surgical scrubs. This term does not include prescription drug products, antiperspirants, astringent/toners, deodorants, facial cleaner or soap, general-use hand or body cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent/medicated toner, and rubbing alcohol.

"Antiperspirant" means a product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, gels, and squeeze bottles, which is marketed for the purpose of reducing perspiration in the human axilla by at least 20 percent in at least 50 percent of a target population.

"Architectural coating" means architectural coating as that term is defined at N.J.A.C. 7:27-23.2.

"ASTM" means the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Astringent/toner" means a product not regulated as a drug by the FDA, and that is applied to the skin for the purpose of cleaning or tightening pores. This term also includes clarifiers and substrate impregnated products. This term does not include any hand, face, or body cleaner or soap product, medicated astringent/medicated toner, cold cream, lotion, or antiperspirant.

"Automotive brake cleaner" means a product designed to clean motor vehicle brake mechanisms by removing oil, grease, brake fluid, brake pad material or dirt from them.

"Automotive engine compartment adhesive" means an aerosol adhesive designed for use in motor vehicle under-the-hood applications that require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200 to 275 degrees Fahrenheit (°F).

"Automotive hard paste wax" means an automotive wax or polish that:

1. Is designed to protect and improve the appearance of automotive paint surfaces;
2. Is a solid at room temperature; and

3. Contains zero percent water by formulation.

"Automobile headliner adhesive" means an aerosol adhesive designed to bond together layers in motor vehicle headliners.

"Automotive instant detailer" means a product designed for use in a pump spray that is designed to be applied to the painted surface of automobiles and wiped off prior to the product being allowed to dry.

"Automotive rubbing or polishing compound" means a product designed primarily to remove oxidation, old paint, scratches, swirl marks, or other defects from the painted surfaces of motor vehicles without leaving a protective barrier.

"Automotive wax, polish, sealant or glaze" means a product designed to seal out moisture, increase gloss, or otherwise enhance a motor vehicle's painted surfaces. This term includes, but is not limited to, products designed for use in autobody repair shops and drive-through car washes, as well as products designed for the general public. This term does not include automotive rubbing or polishing compounds, automotive wash and wax products, surfactant-containing car wash products, or products designed for use on unpainted surfaces such as bare metal, chrome, glass, or plastic.

"Automotive windshield washer fluid" means a product that is a liquid designed for use in a motor vehicle windshield washer system as an antifreeze or for the purpose of cleaning, washing, or wetting the windshield. This term does not include fluids placed by the manufacturer in a new vehicle.

"Bathroom and tile cleaner" means a product designed to clean tile or surfaces in bathrooms. This term does not include products specifically designed to clean toilet bowls or toilet tanks.

"Bug and tar remover" means a product designed to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish:

1. Biological-type residues such as insect carcasses and tree sap; and
2. Road grime, such as road tar, roadway paint markings, and asphalt.

"Carburetor or fuel-injection air intake cleaner" means a product designed to remove fuel deposits, dirt, or other contaminants from a carburetor, choke, throttle body of a fuel-injection system, or associated linkages. This term does not include products designed exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

"Carpet and upholstery cleaner" means a product designed for the purpose of cleaning rugs, carpeting, and the interior of motor vehicles and/or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, nylon, or other synthetic fabrics by eliminating dirt and stains on them. This term includes, but is not limited to, products that make fabric protectant claims. This term does not include general purpose cleaners, spot removers, vinyl or leather cleaners, dry cleaning fluids, or products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

"Charcoal lighter material" means a combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. This term does not include:

1. Electrical starters and probes;
2. Metallic cylinders using paper tinder;
3. Natural gas;
4. Propane; or
5. Fat wood.

"Chemically formulated consumer product category" means a category listed in Table 1 at N.J.A.C. 7:27-24.4(a) that best describes a chemically formulated consumer product.

"Colorant" means a pigment or coloring material used in a product for an aesthetic effect, or to dramatize an ingredient.

"Construction, panel, and floor covering adhesive" means a one-component adhesive that:

1. Is designed exclusively for the installation, remodeling, maintenance, or repair of:
 - i. Structural and building components that include, but are not limited to, beams, trusses, studs, paneling (including, but not limited to, drywall or drywall laminates, fiberglass reinforced plastic (FRP), plywood, particle board, insulation board, pre-decorated hardboard or tileboard),

ceiling and acoustical tile, molding, fixtures, countertops or countertop laminates, cove or wall bases, or flooring or subflooring; or

- ii. Floor or wall coverings that include, but are not limited to, wood or simulated wood covering, carpet, carpet pad or cushion, vinyl-backed carpet, flexible flooring material, nonresilient flooring material, mirror tiles or other types of tiles, or artificial grass; and

2. Is not a floor seam sealer.

"Consumer" means a person who purchases or otherwise acquires any consumer product for personal, family, household, or institutional use. This term does not include a person acquiring a product for resale.

"Consumer product" means a household or institutional product, including any packaging, that includes, but is not limited to:

1. Chemically formulated products including, but not limited to, products that are detergents; cleaning compounds; floor polishes and waxes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; and automotive specialty products; and
2. A portable fuel container or spout or both a portable fuel container and spout.

"Contact adhesive" means an adhesive that:

1. Is designed for application to both surfaces to be bonded together;
2. Is designed to be allowed to dry before the two surfaces are placed in contact with each other;
3. Forms an immediate bond that is impossible or difficult to reposition after both adhesive-coated surfaces are placed in contact with each other;
4. Does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces; and
5. Is not a rubber cement that is primarily intended for use on paper substrates.

"Cooking spray" means a product that is an aerosol and is designed either to reduce sticking on cooking and baking surfaces, or to be applied on food, or both.

"Crawling bug insecticide" means an insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish, or spiders. This term does not include products designed to be used exclusively on humans or animals, or any house dust mite product.

"Date-code" means a code indicating the day, month and year on which a product was manufactured, filled, or packaged.

"Deodorant" means a product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams and squeeze bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

"Device" means an instrument or contrivance, other than a firearm, designed for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than humans and other than bacteria, virus or other microorganism on or in living humans or other living animals). This term does not include equipment used for the application of pesticides if the equipment is sold separately from the pesticide.

"Disinfectant" means a product intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. §§136 et seq.). This term does not include:

1. Products designed solely for use on humans or animals;
2. Products designed for agricultural use;
3. Products designed solely for use in swimming pools, therapeutic tubs, or hot tubs; or
4. Products that, as indicated on the principal display panel or label, are designed primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners, or metal polishes.

"Distributor" means a person to whom a product is sold or supplied for the purpose of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.

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"Dry cleaning fluid" means a non-aqueous liquid product designed and labeled exclusively for use on fabrics which are labeled "dry clean only," such as clothing or drapery, or on "S-coded" fabrics (that is, upholstery fabrics designed to be cleaned only with water-free spot cleaning products as specified by the Joint Industry Fabric Standards Committee). This term includes, but is not limited to, those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer's residence or work place. This term does not include "spot remover" or "carpet and upholstery cleaner."

"Dusting aid" means a product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone-based coating. This term does not include products which consist entirely of compressed gases for use in electronic or other specialty areas.

"Electronic cleaner" means a product designed specifically for the removal of dirt, grease or grime from electrical equipment such as electric motors, circuit boards, electricity panels, and generators.

"Engine degreaser" means a product designed to clean engines and other mechanical parts by removing grease, grime, oil and other contaminants from their external surfaces.

"Establishment" means, when used with respect to an institutional product, any facility (other than living quarters or a residence) including, but not limited to, an office, government agency, factory, school, hospital, sanitarium, prison, retail outlet, restaurant, hotel, store, automobile service and parts center, health club, theater, or transportation facility.

"Fabric protectant" means a product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of liquid into the fabric's fibers. This term does not include waterproofers, products designed for use solely on leather, or products sold in packages of 10 fluid ounces or less and designed for use solely on fabrics labeled "dry clean only."

"Facial cleaner or soap" means a cleaner or soap designed primarily to clean the face. This term includes, but is not limited to, facial cleansing creams, gels, liquids, lotions, and substrate-impregnated forms. This term does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, general-use hand or body cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

"Fat wood" means pieces of wood kindling with high naturally-occurring levels of sap or resin that enhance ignition of the kindling. This term does not include any kindling with substances added to enhance flammability, such as wax-covered or wax-impregnated wood-based products.

"FDA" means the United States Food and Drug Administration.

"Flexible vinyl" means a nonrigid polyvinyl chloride plastic with at least five percent plasticizer content, by weight.

"Flexible vinyl adhesive" means an aerosol adhesive designed to bond flexible vinyl to substrates.

"Floor polish or wax" means a wax, polish or any other product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. This term does not include spray buff products, products designed solely for the purpose of cleaning floors, floor finish strippers, products designed for unfinished wood floors, and coatings subject to architectural coating rules at 40 CFR Parts 9 and 59 or N.J.A.C. 7:27-23.

"Floor seam sealer" means a product designed and labeled exclusively for bonding, fusing, or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

"Floor wax stripper" means a product designed to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax polymers, or by dissolving or emulsifying the polish or wax. This term does not include aerosol floor wax strippers or products designed to remove floor wax solely through abrasion.

"Flying bug insecticide" means an insecticide that is designed for use against flying insects or other flying arthropods, including, but not limited to, flies, mosquitoes, moths or gnats. This term does not include wasp and hornet insecticides, products that are designed to be used exclusively on humans or animals, or any moth-proofing product. For the purposes of this definition only, "moth-proofing product" means a

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product whose label, packaging, or accompanying literature indicates that the product is designed to protect fabrics from damage by moths, but does not indicate that the product is suitable for use against flying insects or other flying arthropods.

"Fragrance" means a substance or complex mixture of aroma chemicals, natural essential oils, or other functional components, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

"Fuel" means solid, liquid, or gaseous material used to produce useful heat by burning.

"Furniture maintenance product" means a wax, polish, conditioner, or any other product designed for the purpose of polishing, protecting or enhancing finished wood surfaces other than floors. This term does not include dusting aids, products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers and lacquers.

"Gel" means a colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.

"General purpose adhesive" means a non-aerosol adhesive designed for use on a variety of substrates. This term does not include contact adhesives; construction, panel, and floor covering adhesives; adhesives designed exclusively for application on one specific category of substrates (that is, substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers, or vinyls); or adhesives designed exclusively for use on one specific category of articles (that is, articles that may be composed of different materials, but perform a specific function, such as gaskets, automotive trim, weather-stripping, or carpets).

"General purpose cleaner" means a product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. This term includes products designed for general floor cleaning, kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces, but does not include general purpose degreasers and electronic cleaners.

"General purpose degreaser" means a product designed to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts. This term does not include:

1. Engine degreasers, general purpose cleaners, adhesive removers, electronic cleaners, or metal polish/cleaners;

2. Products used exclusively in solvent cleaning tanks or related equipment (that is, in tanks or equipment including, but not limited to, cold cleaners, vapor degreasers, conveyorized degreasers, film cleaning machines, or products designed to clean miscellaneous metallic parts by immersion in a container); or

3. Products that are sold exclusively to establishments that manufacture or construct goods or commodities labeled "not for retail sale."

"General-use hand or body cleaner or soap" means a cleaner or soap designed to be used routinely on the skin to clean or remove typical or common dirt and soils. This term includes, but is not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels, and moisturizing cleaners or soaps. This term does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

"Glass cleaner" means a product designed primarily to clean surfaces made of glass. This term does not include products designed solely to clean optical materials used in eyeglasses, photographic equipment, scientific equipment and photocopying machines.

"Hair mousse" means a product that is a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

"Hair shine" means a product designed for the primary purpose of creating a shine when applied to the hair. This term includes, but is not limited to, dual-use products designed primarily to impart a sheen to the hair. This term does not include hair spray, hair mousse, hair styling gel, or spray gel, or products whose primary purpose is to condition or hold the hair.

"Hair spray" means a product designed primarily for the purpose of dispensing droplets of a resin on and into hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

"Hair styling gel" means a high viscosity, often gelatinous, product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure.

"Heavy-duty hand cleaner or soap" means a product designed to clean or remove difficult dirt and soils such as oil, grease, grime, tar, shellac, putty, printer's ink, paint, graphite, cement, carbon, asphalt, or adhesives from the hand with or without the use of water. This term does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, general-use hand or body cleaner or soap, medicated astringent/medicated toner or rubbing alcohol.

"Herbicide" means a pesticide designed to kill or retard a plant's growth, but excludes:

1. Products that are for agricultural use; or
2. Restricted materials that require a permit for use and possession.

"High volatility organic compound" or "HVOC" means any volatile organic compound that exerts a vapor pressure greater than 80 millimeters of mercury (mm Hg) when measured at 20 degrees Celsius (°C).

"Hospital or medical disinfectant" means an antimicrobial product registered with the EPA that qualifies to bear the name or claim "hospital or medical environment disinfectant" pursuant to EPA guidelines published pursuant to 7 U.S.C. §136a(c)(2)(a), including, but not limited to, antimicrobial pesticides used in hospitals, doctor and dentist offices, or other medical environments.

"House dust mite" means mites which feed primarily on skin cells shed in the home by humans and pets and which belong to the phylum Arthropoda, the subphylum Chelicerata, the class Arachnida, the subclass Acari, the order Astigmata, and the family Pyroglyphidae.

"House dust mite product" means a product whose label, packaging, or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches, or other household crawling arthropods.

"Household product" means a product that is designed to be used primarily inside or outside of living quarters or residences, including their immediate surroundings, that are occupied or intended for occupation by individuals and/or households. This term does not include a product that is designed to be used primarily in the maintenance or operation of an establishment.

"HVOC" (see "high volatility organic compound").

"Innovative product exemption" or "IPE" means a determination that a particular consumer product will result in less VOC emissions as compared to a representative compliant consumer product or as compared to the reformulation of the particular product in order to comply with a VOC content limit due to some characteristic of the product formulation, design, delivery system, or other factor. Such determination must be in accordance with N.J.A.C. 7:27-24.4(i) and (j) for a chemically formulated consumer product, and in accordance with N.J.A.C. 7:27-24.8(e) and (f) for a portable fuel container, spout, or portable fuel container and spout, and be issued by:

1. CARB pursuant to the consumer products regulations (including all amendments and supplements) at Title 17, Subchapter 8.5, Article 1, Section 94503.5 or Article 2, Section 94511 of the California Code of Regulations; or

2. The air pollution control agency of another state pursuant to its consumer product regulations, if those consumer product regulations are based on the Ozone Transport Commission (OTC) "Model Rule for Consumer Products" dated November 29, 2001, including subsequent revisions.

"Insecticide" means a pesticide designed for use against insects or other arthropods. This term does not include:

1. Products that are for agricultural use;
2. Products that are for use in structural pest control which require a commercial pesticide applicator licensed under N.J.A.C. 7:30-6;
3. Restricted materials that require a permit for use and possession; or
4. Solid fertilizers that also have insecticidal properties.

"Insecticide fogger" means an insecticide designed to release all or most of its content as a fog or mist into indoor areas during a single application.

"Institutional product" means a product that is designed to be used primarily in the maintenance or operation of an establishment that manufactures, transports, or sells goods or commodities, or provides services for profit, or is engaged in the nonprofit promotion of a particular public, educational, or charitable cause. This term does not include a product that is designed to be used primarily inside or outside of living quarters or residences that are occupied or intended for occupation by individuals (that is, is a household product). It also does not include any product that is used as a raw material or other input into, or used exclusively in the manufacture or construction of the goods or commodities at the establishment.

"Institutional use" means, with respect to a product, use within the lines of, or on property of, an establishment, in the maintenance or operation of the establishment.

...

"Laminate repair/edgebanding adhesive" means an aerosol adhesive designed for:

1. The touch-up or repair of items laminated with high pressure laminates (for example, lifted edges, delaminates); or
2. The touch-up, repair, or attachment of edgebanding materials, including, but not limited to, other laminates, synthetic marble, veneers, wood molding, and decorative metals.

For the purposes of this definition, "high pressure laminates" are sheet materials which consist of paper, fabric, or other core material that has been laminated at temperatures exceeding 265 degrees Fahrenheit (°F), and at pressures between 1,000 and 1,400 pounds per square inch (psi).

"Laundry prewash" means a product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents or provides specialized performance.

"Laundry starch product" means a product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and may also act to help ease ironing of the fabric. This term includes, but is not limited to, fabric finish, sizing, and starch.

...

"Liquid" means a substance or mixture of substances which is capable of a visually detectable flow as determined under ASTM D-4359-90. This term does not include powders or other materials that are composed entirely of solid particles.

"Low vapor pressure VOC" or "LVP-VOC" means a VOC that is a chemical compound (that is, a molecule of definite chemical formula and isomeric structure) or mixture (that is, a substrate comprised of two or more chemical compounds) that contains at least one carbon atom and meets one of the following conditions:

1. It has a vapor pressure less than 0.1 millimeters of mercury (mm Hg) at 20 degrees centigrade (°C), as determined by CARB Method 310;
2. Its vapor pressure is unknown and it is:
 - i. A chemical compound with more than 12 carbon atoms; or
 - ii. A chemical mixture comprised solely of compounds with more than 12 carbon atoms;
3. It is a chemical compound with a boiling point greater than 216 degrees centigrade (°C), as determined by CARB Method 310; or
4. It is the weight percent of a chemical mixture that boils above 216 degrees centigrade (°C), as determined by CARB Method 310.

"Lubricant" means a product designed to reduce friction, heat, noise, or wear between moving parts, or to loosen rusted or immovable parts or mechanisms. This term does not include:

1. Automotive power steering fluids;
2. Products for use inside power generating motors, engines, or turbines, or their associated power-transfer gearboxes;
3. Two cycle oils or other products designed to be added to fuels;
4. Products for use on the human body or animals; or
5. Products that are sold exclusively to establishments which manufacture or construct goods or commodities and are labeled "not for retail sale."

"Manufacturer" means a person who manufactures, imports, assembles, processes, produces, packages, repackages, or relabels a

product. Manufacturer also includes any person for whom the product is manufactured, or by whom the product is distributed, if that person is identified as such on the product label. Manufacturer also includes any person that hires another person to manufacture a product for compensation.

"Medicated astringent/medicated toner" means a product regulated as a drug by the FDA and that is applied to the skin for the purpose of cleaning or tightening pores. This term includes, but is not limited to, clarifiers and substrate-impregnated products. This term does not include hand, face, or body cleaner or soap products, astringent/toner, cold cream, lotion, antiperspirants, or products that must be purchased with a doctor's prescription.

"Medium volatility organic compound" or "MVOC" means a volatile organic compound that exerts a vapor pressure greater than two millimeters of mercury (mm Hg) and less than or equal to 80 millimeters of mercury (mm Hg) when measured at 20 degrees Centigrade (°C).

"Metal polish/cleanser" means a product designed primarily to improve the appearance (that is, to remove or reduce stains, impurities, or oxidation from surfaces or to make surfaces smooth and shiny) of finished metal, metallic, or metallized surfaces by physical or chemical action. This term includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel and other ornamental metals. This term does not include automotive wax, polish, sealant or glaze, wheel cleaner, paint remover or stripper, products designed and labeled exclusively for automotive and marine detailing, or products designed for use in degreasing tanks.

"Mist spray adhesive" means an aerosol that is not a special purpose spray adhesive and that delivers a particle or mist spray, resulting in the formation of fine, discrete particles that yield a generally uniform and smooth application of adhesive to the substrate.

"Mounting adhesive" means an aerosol adhesive designed to permanently mount photographs, artwork, and any other drawn or printed media to a backing (paper, board, cloth, etc.) without causing discoloration to the artwork.

"Multi-purpose dry lubricant" means a lubricant that is:

1. Designed and labeled to provide lubricity by depositing a thin film of graphite, molybdenum disulfide ("moly"), or polytetrafluoroethylene or closely related fluoropolymer ("teflon") on surfaces; and

2. Designed for general purpose lubrication, or for use in a wide variety of applications.

"Multi-purpose lubricant" means a product that is a lubricant designed for general purpose lubrication, or for use in a wide variety of applications. This term does not include multi-purpose dry lubricants, penetrants, or silicone-based multi-purpose lubricants.

"Multi-purpose solvent" means an organic liquid designed to be used for a variety of purposes, including cleaning or degreasing of a variety of substrates, or thinning, dispersing or dissolving other organic materials. This term includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific or other laboratories. This term does not include solvents used in cold cleaners, vapor degreasers, conveyorized degreasers or film cleaning machines, or solvents that are incorporated into, or used exclusively in the manufacture or construction of, the goods or commodities at the site of the establishment.

"Nail polish remover" means a product designed to remove nail polish and coatings from fingernails or toenails.

"Nominal capacity" means, with respect to a portable fuel container, the volume that the manufacturer indicates is the maximum recommended filling level.

"Non-aerosol product" means a product that is not dispensed by a pressurized spray system.

"Non-carbon containing compound" means a compound that does not contain any carbon atoms.

"Nonresilient flooring" means flooring of a mineral content which is not flexible. This term includes terrazzo, marble, slate, granite, brick, stone, ceramic tile and concrete.

"Non-selective terrestrial herbicide" means a product that is a terrestrial herbicide, toxic to plants without regard to species.

"Outboard engine" means a spark-ignition marine engine that, when properly mounted on a marine watercraft in the position to operate, houses the engine and drive unit external to the hull of the marine watercraft.

"Oven cleaner" means a product designed to clean ovens and to remove dried food deposits from oven walls.

"Package" or "packaging" means the part or parts of a product which serve only to contain, enclose, incorporate, deliver, dispense, wrap or store the functional item or material (such as a chemically formulated substance or mixture of substances) which is solely responsible for accomplishing the purposes for which the product was designed or intended. This term includes any article onto or into which the principal display panel is incorporated, etched, printed, or attached.

"Paint" means a pigmented liquid, liquefiable, or mastic composition designed for application to a substrate in a thin layer that is converted to an opaque solid film after application, and is used for protection, decoration or identification, or to serve some functional purpose, such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

"Paint remover or stripper" means a product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. This term does not include multi-purpose solvents, paint brush cleaners, products designed and labeled exclusively to remove graffiti, and hand cleaner products that claim to remove paints and other related coatings from skin.

"Penetrant" means a product that is a lubricant designed and labeled primarily to loosen metal parts that have bonded together due to rusting, oxidation, or other causes. This term does not include multi-purpose lubricants that claim to have penetrating qualities, but are not labeled primarily to loosen bonded parts.

"Permeation" means, with respect to a portable fuel container, the process by which individual fuel molecules may penetrate the walls and various assembly components of the portable fuel container directly to the outside ambient air.

"Pesticide" means a substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling or mitigating any pest, or any substance or mixture of substances labeled, designed or intended for use as a defoliant, desiccant, or plant regulator. This term does not include any substance, mixture of substances, or device which the EPA does not consider to be a pesticide in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. §§136 et seq.).

"Polyolefin adhesive" means an aerosol adhesive designed to bond polyolefins to substrates.

"Polystyrene foam adhesive" means an aerosol adhesive designed to bond polystyrene foam to substrates.

"Portable fuel container" means a product that is a reusable container or vessel, with a nominal capacity of ten gallons or less, designed or used primarily for receiving, transporting, storing or dispensing fuel or a fuel blend.

"Portable fuel container product category" means the category that best describes a spout and/or a portable fuel container with respect to its nominal capacity, material construction, fuel flow rate, and permeation rate, as applicable, as determined by the Department.

"Plasticizer" means a material, such as a high boiling point organic solvent, that is incorporated into a plastic to increase its flexibility, workability, or distensibility, and may be determined using ASTM Method E260-91 or from product formulation data.

"Principal display panel or panels" means that part, or those parts, of a label that are so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display or purchase. If a product and its packaging have more than one principal display panel, all requirements pertaining to the "principal display panel" shall pertain to each such "principal display panel."

"Product brand name" means the name of the product exactly as it appears on the principal display panel of the product.

"Product line" means a group of products of identical form and function belonging to the same chemically formulated consumer product category(ies).

"Representative code" means a code that identifies a portable fuel container or portable fuel container and spout as subject to and complying with N.J.A.C. 7:27-24.8.

"Restricted materials" means pesticides classified as restricted use pesticides under N.J.A.C. 7:30-2.10 or classified for restricted use by EPA pursuant to section 3(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. §§ 136 et seq.).

"Retail outlet" means any establishment at which products are sold, supplied, or offered for sale directly to consumers.

"Retailer" means any person who owns, leases, operates, manages, controls, or supervises a retail outlet.

"Roll-on product" means an antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

"Rubber and vinyl protectant" means a product designed to protect, preserve or renew vinyl, rubber, and plastic on vehicles, tires, luggage, furniture, and household products such as vinyl covers, clothing, and accessories. This term does not include products primarily designed to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

"Rubbing alcohol" means a product containing isopropyl alcohol (also called isopropanol) or denatured ethanol and labeled for topical use, usually to decrease germs in minor cuts and scrapes, to relieve minor muscle aches, as a rubefacient, or for massage.

"Safety can" means a closed container that has a nominal capacity of five gallons or less, having a flash-arresting screen, spring-closing lid and spout cover and that is designed so that it will safely relieve internal pressure when exposed to fire.

"Sealant and caulking compound" means a product with adhesive properties that is designed to fill, seal, waterproof, or weatherproof gaps or joints between two surfaces. This term does not include roof cements and roof sealants, insulating foams, removable caulking compounds (that is, compounds which temporarily seal windows or doors for three to six month time intervals), clear/paintable/water resistant caulking compounds (that is, compounds which contain no appreciable level of opaque fillers or pigments, transmit most or all visible light through the caulk when cured, are paintable, and are immediately resistant to precipitation upon application), floor seam sealers, products designed exclusively for automotive uses, or sealers that are applied as continuous coatings.

"Semisolid" means a product that, at room temperature, will not pour, but will spread or deform easily, including gels, pastes, and greases.

"Shaving cream" means an aerosol product that dispenses a foam lather intended to be used with a blade or cartridge razor, or other wet-shaving system, in the removal of facial or other body hair.

"Silicone-based multi-purpose lubricant" means a product that is a lubricant which:

1. Is designed and labeled to provide lubricity primarily through the use of silicone compounds including, but not limited to, polydimethylsiloxane;

2. Is designed and labeled for general purpose lubrication, or for use in a wide variety of applications; and

3. Is not designed and labeled exclusively to release manufactured products from molds.

"South Coast Air Quality Management District Rule" means a rule issued by California's South Coast Air Quality Management District (SCAQMD).

"Special purpose spray adhesive" means an aerosol adhesive that is a mounting adhesive, a flexible vinyl adhesive, a polystyrene foam adhesive, an automobile headliner adhesive, a polyolefin adhesive, a laminate repair/edgebanding adhesive, or an automotive engine compartment adhesive.

"Spill-proof spout" means any spout that complies with the applicable standards specified at N.J.A.C. 7:27-24.8.

"Spill-proof system" means any configuration of portable fuel container and firmly attached spout that complies with the applicable standards at N.J.A.C. 7:27-24.8.

"Spot remover" means a product designed to clean localized areas, or remove localized spots or stains on cloth or fabric such as drapes, carpets, upholstery, and clothing, that does not require subsequent laundering to achieve stain removal. This term does not include dry cleaning fluid, laundry prewash, carpet and upholstery cleaner, or multi-purpose solvent.

"Spout" means, with respect to a portable fuel container, any device that can be firmly attached to the container and that serves as the conduit through which the contents of the portable fuel container may be poured out of the container.

"Spray buff product" means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

"Stick product" means an antiperspirant or deodorant that contains active ingredients in a solid matrix form, and that dispenses the active ingredients by frictional action on the affected area.

"Structural waterproof adhesive" means an adhesive whose bond lines are resistant to conditions of continuous immersion in fresh or salt water, and that conforms with Federal Specification MMM-A-181D (Type 1, Grade A).

"Target fuel tank" means any receptacle that receives fuel from the portable fuel container.

"Terrestrial" means to live on or grow from land.

"Tire sealant and inflation" means a pressurized product designed to temporarily inflate and seal a leaking tire.

"Type A propellant" means a compressed gas such as CO₂, N₂, N₂O, or compressed air, used as a propellant and either incorporated with the product or contained in a separate chamber within the product's packaging.

"Type B propellant" means any halocarbon used as a propellant, including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).

"Type C propellant" means any propellant not a Type A or Type B propellant, including propane, isobutane, n-butane, and dimethyl ether (also known as dimethyl oxide).

"Undercoating" means an aerosol product designed to impart a protective, nonpaint layer to the undercarriage, trunk interior, and/or firewall of motor vehicles to prevent the formation of rust or to deaden sound. This term includes, but is not limited to, rubberized, mastic, or asphaltic products.

"Usage directions" means the text or graphics on the product's principal display panel, label, or accompanying literature that describes to the end user how or in what quantity the product is to be used.

"Variance" means a temporary exemption based on extraordinary economic hardship granted in accordance with N.J.A.C. 7:27-24.4(i) and (j) to a manufacturer of a chemically formulated consumer product, which temporary exemption relieves the manufacturer from meeting an applicable VOC content standard in Table 1 at N.J.A.C. 7:27-24.4(a), or granted in accordance with N.J.A.C. 7:27-24.8(e) and (f) to a manufacturer of a portable fuel container, spout, or portable fuel container and spout, which temporary exemption relieves the manufacturer from meeting the standards at N.J.A.C. 7:27-24.8.

"Volatile organic compound" or "VOC" means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, Appendix A, as applicable, or which have been approved in writing by the Department and are acceptable to EPA. This term excludes those compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. As of April 9, 1998, the compounds and classes of perfluorocarbons excluded from EPA's definition of VOC at 40 CFR 51.100(s) are set forth below:

ADOPTIONS

ENVIRONMENTAL PROTECTION

methane

ethane

methylene chloride (dichloromethane)

1,1,1-trichloroethane (methyl chloroform)

1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)

trichlorofluoromethane (CFC-11)

dichlorodifluoromethane (CFC-12)

chlorodifluoromethane (HCFC-22)

trifluoromethane (HFC-23)

1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)

chloropentafluoroethane (CFC-115)

2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)

1,1,1,2-tetrafluoroethane (HFC-134a)

1,1-dichloro-1-fluoroethane (HCFC-141b)

1-chloro-1,1-difluoroethane (HCFC-142b)

2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)

pentafluoroethane (HFC-125)

1,1,2,2-tetrafluoroethane (HFC-134)

1,1,1-trifluoroethane (HFC-143a)

1,1-difluoroethane (HFC-152a)

parachlorobenzotrifluoride (PCBTf)

cyclic, branched or linear completely methylated siloxanes

acetone

perchloroethylene (tetrachloroethylene)

3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)

1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)

1,1,1,2,3,4,4,5,5-decafluoropentane (HFC 43-10mee)

difluoromethane (HFC-32)

ethylfluoride (HFC-161)

1,1,1,3,3,3-hexafluoropropane (HFC-236fa)

1,1,2,2,3-pentafluoropropane (HFC-245ca)

1,1,2,3,3-pentafluoropropane (HFC-245ea)

1,1,1,2,3-pentafluoropropane (HFC-245eb)

1,1,1,3,3-pentafluoropropane (HFC-245fa)

1,1,1,2,3,3-hexafluoropropane (HFC-236ea)

1,1,1,3,3-pentafluorobutane (HFC-365mfc)

chlorofluoromethane (HCFC-31)

1-chloro-1-fluoroethane (HCFC-151a)

1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)

1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$)2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane
($(CF_3)_2CFCF_2OCH_3$)1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$)2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane
($(CF_3)_2CFCF_2OC_2H_5$)

methyl acetate

perfluorocarbon compounds which fall into these classes:

cyclic, branched, or linear, completely fluorinated alkanes

cyclic, branched, or linear, completely fluorinated ethers with no unsaturations

cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations

sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

"Wasp and hornet insecticide" means any insecticide that is designed for use against wasps, hornets, yellow jackets or bees by allowing the user to spray a directed stream or burst from a distance at the intended insects or their hiding place.

"Waterproofer" means a product designed and labeled exclusively to repel water from fabric or leather substrates. This term does not include fabric protectants.

"Web spray adhesive" means any aerosol adhesive that is not a mist spray or special purpose spray adhesive.

7:27-24.2 Applicability

(a) This subchapter applies to any person who sells, offers for sale, holds for sale, distributes, supplies, or manufactures for sale in New Jersey any consumer product in (b) or (c) below and that is for use in New Jersey by a consumer or by a person who uses the product in providing a service.

(b) This subchapter applies to the following consumer products, unless the product is excluded under (d) or (e) below:

1. A chemically formulated consumer product which belongs to any of the chemically formulated consumer products categories listed in Table 24A at N.J.A.C. 7:27-24.4(a); and

2. A portable fuel container and spout.

(c) Manufacturers of chemically formulated consumer products that are not covered by (b)1 above but that contain greater than five percent by weight VOC having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (one millimeter of mercury), absolute or greater measured at standard conditions, shall comply with the recordkeeping requirements at N.J.A.C. 7:27-24.6(c) through (e) and (i). However, the manufacturers of such chemically formulated consumer products are not subject to the following requirements: N.J.A.C. 7:27-[24.3(e)]* 24.4; 24.5; 24.6(a), (b), (f) through (h) and (j); and 24.7.

(d) This subchapter does not apply to the following chemically formulated consumer products:

1. Any architectural coating. Architectural coatings are subject to the requirements of N.J.A.C. 7:27-23; and coating operations that are part of manufacturing processes are subject to the requirements of N.J.A.C. 7:27-16;

2. Any bait station insecticide, if the bait is not more than 0.5 ounces by weight;

3. Any air freshener or any insecticide which contains at least 98 percent by weight paradichlorobenzene;

4. Any air freshener consisting entirely of one or more of the following:

i. Fragrance;

ii. Inorganic compounds;

iii. Compounds excluded from the definition of "VOC," as set forth at N.J.A.C. 7:27-24.1; and

iv. Any "low vapor pressure VOC," as that term is defined at N.J.A.C. 7:27-24.1;

5. Any of the following adhesives:

i. An adhesive sold in a package holding one fluid ounce or less;

ii. A contact adhesive that is a non-aerosol product and that is sold in units of product, less packaging, which consist of more than one gallon; and

iii. Either of the following adhesives, provided that it is a non-aerosol product and that it is sold in units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces:

(1) A construction, panel, and floor covering adhesive; and

(2) A general purpose adhesive;

6. Any sealant and caulking compound, if the compound is sold in units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces; and

7. Any hospital or medical disinfectant.

(e) This subchapter does not apply to the following types of portable fuel containers:

1. A safety can meeting the requirements of Federal regulations at 29 C.F.R. 1926;

2. A portable fuel container if the container has a nominal capacity less than or equal to one quart;

3. A rapid refueling device with nominal capacity greater than or equal to four gallons, if the device:

i. Is designed for use in officially sanctioned off-highway motorcycle competitions;

ii. Creates a leak-proof seal against a target fuel tank; or

iii. Is designed to operate in conjunction with a receiver permanently installed on the target fuel tank; or

4. A portable fuel tank manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and the outboard engine for the purpose of operating the outboard engine.

(f) The provisions at N.J.A.C. 7:27-24.4(a) and 24.8 do not apply to a consumer product that is manufactured in New Jersey, or that is sold in New Jersey by a manufacturer or a distributor, provided that:

1. The product is for shipment and use exclusively outside of New Jersey;

2. The manufacturer or distributor ensures that the product's shipping documentation includes a statement that the shipment is not for sale and use in New Jersey and gives its immediate shipping destination;

3. The manufacturer or distributor makes the shipping documentation available to the Department, upon written request, for any product it has shipped or received;

4. The manufacturer or distributor demonstrates, to the satisfaction of the Department, that it has taken reasonably prudent precautions to ensure that the product is not offered for sale, held for sale, sold, or otherwise supplied to a retail outlet or a consumer located in New Jersey; and

5. The manufacturer or a distributor does not offer for sale, hold for sale, sell, or otherwise supply any quantity of the product to a retail outlet located in New Jersey, and has not knowingly allowed or enabled another person to do so.

(g) No manufacturer shall be held liable for the sale of a consumer product that does not comply with the requirements of this subchapter to a consumer in New Jersey if:

1. The product was manufactured for use exclusively outside of New Jersey; and

2. The manufacturer meets each of the obligations listed in (f)2 through 5 above.

(h) A retailer who sells, offers for sale, or holds for sale in New Jersey a chemically formulated consumer product that violates the VOC content standards at N.J.A.C. 7:27-24.4(a) or a portable fuel container and/or spout that violates the design standards at N.J.A.C. 7:27-24.8(a) and (b) may demonstrate compliance with N.J.A.C. 7:27-24.4(a) or 24.8(a) and (b), as applicable, if the retailer provides any one or more of the following types of documentation with respect to its purchase of the consumer product, portable fuel container and/or spout in question:

1. Written communication between the retailer and the manufacturers and distributors that the retailer will accept only consumer products for sale in New Jersey that comply with N.J.A.C. 7:27-24;

2. Written agreements between the retailer and the manufacturers and distributors in which the manufacturers and distributors commit to supply to the retailer only consumer products that comply with N.J.A.C. 7:27-24; or

3. The retailer's use of invoices, purchase orders and other contractual and billing documents, which specify that the retailer will only accept consumer products that comply with N.J.A.C. 7:27-24.

7:27-24.3 General provisions

(a) Compliance with this subchapter does not exempt a manufacturer, distributor, or retailer of a product regulated under this subchapter from the obligation to also comply with any and all other applicable Federal

and State laws and rules, including State fire codes, safety codes, and other safety regulations. Any finding by the Department that a manufacturer, distributor, or retailer of a product is in compliance with this section shall not be construed to be a determination of compliance with such other laws and rules.

(b) Upon the written request of the Department, any person who is subject to this subchapter shall:

1. Identify the distributor, manufacturer, or other person from whom the product identified in the written request was obtained; and

2. Make the shipping documentation for the product identified in the written request available to the Department for any product it has shipped or received.

(c) Except as provided at N.J.A.C. 7:27-24.5(b), any person who submits information to the Department pursuant to this subchapter may assert a confidentiality claim for that information in accordance with N.J.A.C. 7:27-1.6. The Department will process and evaluate confidentiality claims and treat information claimed to be confidential in accordance with N.J.A.C. 7:27-1.6 through 1.30.

(d) A non-electronic submittal required pursuant to this subchapter shall be sent to the following address:

Bureau of Air Quality Planning
New Jersey Department of Environmental Protection
PO Box 418
401 East State Street
Trenton, New Jersey 08625-0418

[(e) Each manufacturer and distributor of a consumer product subject to N.J.A.C. 7:27-24.2(b) shall include on the invoice, bill of lading, or other shipping document provided to the distributor or retailer receiving the product in New Jersey a statement indicating that the product included on that shipping document and subject to N.J.A.C. 7:27-24.2(b), shipped by that manufacturer or distributor for sale in New Jersey, is in compliance with this subchapter. These documents shall be maintained by the manufacturer, distributor and/or retailer for no less than five years and shall be made available by the document recipient to the Department upon written request.]

*[(f)]**[(e)]* Any submittal to the Department, other than a registration or re-registration, shall be certified in accordance with N.J.A.C. 7:27-1.39, Certification of information.

*[(g)]**[(f)]* In each written request by the Department for information, the Department shall specify the information to be reported and may specify the format in which it is to be reported.

7:27-24.4 Chemically formulated consumer products: standards

(a) Except as provided at N.J.A.C. 7:27-24.2 and in (c) and (i) below, no person shall sell, offer for sale, hold for sale, distribute, supply, or manufacture for sale in New Jersey a chemically formulated consumer product that belongs to a chemically formulated consumer product category listed in Table 1 below, that was manufactured on or after the operative date in Table 1 below, and that contains a VOC content in excess of the applicable limit specified in Table 1 below.

TABLE 1
VOC CONTENT LIMITS FOR CHEMICALLY FORMULATED CONSUMER PRODUCTS

Chemically Formulated Consumer Product Category	Form	Maximum Allowable VOC Content (percent by weight, ¹ unless otherwise indicated) ²	
		State Standard Operative Date 4/30/96-12/31/04 ³	State Standard Operative Date 1/1/05
/Adhesives	Aerosol:	75	
	Mist spray		65
	Web spray		55
	Special purpose spray adhesives:		
	Mounting, automotive engine compartment, and flexible vinyl		70
	Polystyrene foam and automotive headliner		65
	Polyolefin and laminate repair/ edgebanding		60

ADOPTIONS

ENVIRONMENTAL PROTECTION

	Contact	80	80
	Construction, panel, and floor covering	40	15
	General purpose	10	10
	Structural waterproof	(Reserved)	15
✓ Air fresheners	Single-phase aerosols	70	30
	Double-phase aerosols	30	25
	Liquids/pump sprays	18	18
	Solids/gels	3	3
✓ Antiperspirants	Aerosols	60 HVOC	40 HVOC
			10 MVOC
	Non-aerosols	0 HVOC	0 HVOC
			0 MVOC
✓ Automotive brake cleaners			45
✓ Automotive rubbing or polishing compounds			17
✓ Automotive waxes, polishes, sealants or glazes	Hard paste waxes		45
	Instant detailers		3
	All other forms		15
✓ Automotive windshield washer fluids			35
✓ Bathroom and tile cleaners	Aerosols	7	7
	All other forms	5	5
✓ Bug and tar remover			40
✓ Carburetor or fuel-injection air intake cleaners	Aerosols	75	45
	Non-aerosols	75	45
✓ Carpet and upholstery cleaners	Aerosols		7
	Non-aerosols (dilutables)		0.1
	Non-aerosols (ready-to-use)		3.0
✓ Charcoal lighter material			0.02 lb start ⁴
✓ Cooking sprays	Aerosols	18	18
✓ Deodorants	Aerosols	20 HVOC	0 HVOC
			10 MVOC
	Non-aerosols	0 HVOC	0 HVOC
			0 MVOC
✓ Dusting aids	Aerosols	35	25
	All other forms	7	7
✓ Engine degreasers	Aerosols	75	35
	Non-aerosols	75	5
✓ Fabric protectants		75	60
✓ Floor polishes/waxes	Products for flexible flooring materials	7	7
	Products for nonresilient flooring	10	10
	Wood floor wax	90	90
✓ Floor wax stripper	Non-aerosol:		
	For light or medium build-up		3
	For heavy build-up		12
✓ Furniture maintenance products	Aerosols	25	17
	All other forms except solid or paste		7
✓ General purpose cleaners	Aerosols	10	10
	Non-aerosols	10	4
✓ General purpose degreasers	Aerosols		50
	Non-aerosols		4
✓ Glass cleaners	Aerosols	12	12
	All other forms	8	
	Non-aerosols		4
✓ Hair mousses		16	6
✓ Hair shines			55
✓ Hair sprays		80	55
✓ Hair styling gels		6	6

ENVIRONMENTAL PROTECTION

ADOPTIONS

✓ Heavy-duty hand cleaner or soap			8
✓ Insecticides	Crawling bug:	40	
	Aerosols		15
	All other forms		20
	Flea and tick	25	25
	Flying bug:	35	
	Aerosols		25
	All other forms		35
	Foggers	45	45
	Lawn and garden:	20	
	Non-aerosols		3
	All other forms		20
	Wasp and hornet		40
✓ Laundry prewash	Aerosol/solids	22	22
	All other forms	5	5
✓ Laundry starch products		5	5
✓ Metal polishes/cleansers			30
✓ Multi-purpose lubricants (excluding solid or semi-solid products)			50
✓ Nail polish removers		85	75
✓ Non-selective terrestrial herbicide	Non-aerosols		3
✓ Oven cleaners	Aerosols/pump sprays	8	8
	Liquids	5	5
✓ Paint removers or strippers			50
✓ Penetrants			50
✓ Rubber and vinyl protectants	Aerosols		10
	Non-aerosols		3
✓ Sealants and caulking compounds			4
✓ Shaving creams		5	5
✓ Silicone-based multi-purpose lubricants (excluding solid or semi-solid products)			60
✓ Spot removers	Aerosols		25
	Non-aerosols		8
✓ Tire sealants and inflators			20
✓ Undercoatings	Aerosols		40

Footnotes to Table:

¹Weight is the product's total weight, exclusive of the packaging.

²The Federal VOC limits, which became operative December 10, 1998, are promulgated at 40 CFR 59, Subpart C, Table 1.

³On and after January 1, 2005, the State limits operative as of April 30, 1996 will no longer be applicable.

⁴See N.J.A.C. 7:27-24.4(h) for additional State requirements pertaining to charcoal lighter material.

(b) For the purpose of determining compliance with a VOC content limit set forth in Table 1 above, if the label, packaging, or accompanying literature specifically states that the consumer product should be diluted prior to use, the VOC content of the product shall be determined as follows:

1. If the label, packaging, or accompanying literature states that the product should be diluted with water or non-VOC solvent prior to use, the VOC content of the product shall be determined only after the minimum recommended dilution has taken place. Such minimum recommended dilution shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains; and

2. If the label, packaging, or accompanying literature states that the product should be diluted with any VOC solvent prior to use, the VOC content of the product shall be determined only after the maximum recommended dilution has taken place.

(c) Notwithstanding the provisions of (a) above and the specifications of Table 1 above, for a consumer product with a label that is registered

under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. §136-136y), the operative date of the applicable State standard is one year after the operative date specified in Table 1.

(d) A chemically formulated consumer product manufactured prior to the operative date specified for that product in Table 1 above, may be sold, supplied, or offered for sale after the specified operative date, if that product complies with the standards in effect at the time that product was manufactured, and if that product displays the date or date-code in accordance with the requirements at N.J.A.C. 7:27-24.5(d), (e) and (f).

(e) For the purpose of determining compliance with a VOC content limit set forth in Table 1 above, the VOC content of a consumer product shall not include the following:

1. Any low vapor pressure-VOC;
2. Any fragrances, up to a combined level of two percent by weight, contained in the product, not including the weight of any packaging; and
3. For an antiperspirant or deodorant, the following:
 - i. Any colorants contained in the product, up to a combined level of two percent by weight;

ii. With respect to the medium volatility organic compound (MVOC) content standards, ethanol; and

iii. Those VOCs that contain more than 10 carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of two mm Hg or less at 20 degrees Celsius.

(f) If an aerosol adhesive could be classified in more than one chemically formulated consumer product category listed in Table 1, the standard for the category with the lowest applicable VOC limit applies.

(g) If anywhere on the principal display panel of a consumer product, any representation is made that the product may be used as, or is suitable for use as, a consumer product that belongs to more than one chemically formulated consumer product category in Table 1 at (a) above, then the lower VOC content limit shall apply. However, this subsection does not apply to general purpose cleaners, antiperspirants, and deodorant products.

(h) No person shall sell, offer for sale, hold for sale, distribute, supply, or manufacture for sale in New Jersey, on or after January 1, 2005, a charcoal lighter material product, even if it conforms with the VOC content standards in (a) above, unless the following requirements are met:

1. CARB or the air pollution agency of another state has issued certification that attests that it is satisfied that the VOC emissions from the ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pounds of VOC per start;

2. The certification is currently effective at the time of sale. The Department shall consider the certification to be in effect for as long as the issuing State agency considers the certification to remain in effect; and

3. The product usage directions for the charcoal lighter material provided on the label, packaging, or accompanying literature are the same as those on which the certification is based.

(i) A chemically formulated consumer product is exempt from (a) above if:

1. CARB, pursuant to its consumer products regulations (including all amendments and supplements) at Title 17, Subchapter 8.5, Article 1, Section 94503.5 or Article 2, Section 94511 of the California Code of Regulations, or the air pollution control agency of another state that has adopted a consumer product rule based on or substantially equivalent to the Ozone Transport Commission (OTC) "Model Rule for Consumer Products" dated November 29, 2001, including subsequent revisions (accessible at the OTC's website <http://www.sso.org/otc/Publications/pub2.htm>), has granted to the product's manufacturer an IPE, ACP, or variance for the product; and

2. The IPE, ACP, or variance is valid for use in New Jersey pursuant to (j) below.

(j) An IPE, ACP, or variance in (i) above shall not be valid for use in New Jersey to comply with this subchapter unless:

1. The IPE, ACP, or variance is currently in effect (the Department shall consider an IPE, ACP, or variance to be in effect if the issuing agency deems the exemption to be in effect);

2. The product (including its form) for which the IPE, ACP, or variance is being used to comply with this section meets the following:

i. The product belongs to a chemically formulated consumer product category that is subject to a VOC content limit set in Table 1 above; and

ii. The VOC content limit promulgated for this product by the agency that issued the IPE, ACP, or variance, is equal to or more stringent than the most stringent applicable VOC content limit in Table 1 above;

3. For a variance, the approval is based on the issuing agency's finding that:

i. Requiring the manufacturer's compliance with the standard would, because of reasons beyond the reasonable control of the applicant, result in extraordinary economic hardship for the manufacturer;

ii. The public interest in mitigating this hardship to the manufacturer outweighs the public interest in avoiding any increased emissions of air contaminants that would result from issuing the variance; and

iii. The manufacturer's proposed methods for achieving compliance with the standard can reasonably be implemented and will achieve compliance as expeditiously as possible;

4. For an IPE, the manufacturer demonstrates by clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems, or other factor, the use of the product will result

in less VOC emissions as compared to either the VOC emissions from a representative chemically formulated consumer product that complies with the VOC content limits specified in Table 1 above, or as compared to the calculated VOC emissions from a noncomplying representative product, if the product had been reformulated to comply with the VOC limits specified in Table 1 above;

5. Prior to relying on an IPE, ACP, or variance for compliance, the manufacturer has submitted to the Department, in accordance with (k) below, the following:

i. A statement that, for a specified chemically formulated consumer product that it manufactures, it intends to comply with this section under an IPE, ACP, or variance rather than meet the applicable VOC content standards in Table 1 above;

ii. The brand name of the consumer product, and the specific chemically formulated consumer product category in Table 1 above to which the product belongs, including its form(s) (if applicable);

iii. A copy of the document(s) setting forth the IPE, ACP, or variance; the issuing agency's approval; the issuing agency's conditions of its approval; the demonstration of (j)4 above if an IPE; and any documents from the issuing agency that subsequently modify or terminate its conditions of approval; documentation demonstrating compliance with the IPE, ACP or variance; and

iv. A statement that the IPE, ACP, or variance, as well as the product for which the IPE, ACP, or variance is being used, conforms with (j)1 through 4 above, as applicable; and

6. The manufacturer has included in its electronic registration, submitted pursuant to N.J.A.C. 7:27-24.5(a), (b) and (c), indication that for the specified product it is complying with this section under an IPE, ACP or variance.

(k) Any submittal made pursuant to (j)5 above shall be sent to the address given at N.J.A.C. 7:27-24.3(d) and the envelope or package shall be labeled as follows:

*[i.]*1.* For an IPE, "Attention: Consumer Product Innovative Product Exemption";

*[ii.]*2.* For an ACP, "Attention: Consumer Product Alternative Control Plan"; or

*[iii.]*3.* For a variance, "Attention: Consumer Product Variance."

(l) On and after January 1, 2005, no person shall sell, offer for sale, hold for sale, distribute, supply, or manufacture for sale in New Jersey, an aerosol adhesive product that contains methylene chloride, perchloroethylene, or trichloroethylene, even if its VOC content conforms with the standards required pursuant to (a) above.

7:27-24.5 Chemically formulated consumer products: registration and labeling

(a) The manufacturer of a chemically formulated consumer product that is subject to this subchapter pursuant to N.J.A.C. 7:27-24.2(b)1 shall register or re-register (for manufacturers who have submitted registration prior to *[the operative date of this rule]* *June 6, 2004*) with the Department as follows:

1. The registration or re-registration shall be submitted to the Department on the form provided by the Department at <http://www.state.nj.us/dep/baqp>, and shall be submitted electronically, by email, on diskette, or on CD-ROM, unless:

i. Electronic submission would impose hardship on the manufacturer; and

ii. The Department is satisfied that a hardship exists and approves a written request from the manufacturer to submit the information on paper pursuant to (c) below;

2. The registration or re-registration shall be submitted in accordance with the following schedule:

i. For a chemically formulated consumer product sold in New Jersey prior to January 1, 2005, the registration or re-registration shall be submitted on or after *[the operative date of these amendments]* *June 6, 2004* and prior to January 1, 2005; and

ii. For a chemically formulated consumer product sold in New Jersey on or after January 1, 2005, that was not sold in New Jersey prior to January 1, 2005, if the product belongs to a category that the manufacturer has not previously registered with the Department, the registration shall be submitted prior to selling the product in New Jersey;

3. If, subsequent to the submission of its registration, a manufacturer begins to manufacture a product for sale in New Jersey that belongs to a chemically formulated consumer product category that was not listed in the original registration, or if information provided in the registration changes, the manufacturer shall submit a revised registration including the new information within 90 days of the change; and

4. The registration or re-registration shall include the following information:

- i. The name of the manufacturer;
- ii. The full mailing address of the manufacturer;
- iii. The name and telephone number of a contact person;
- iv. The chemically formulated consumer product category (as listed in Table 1 at N.J.A.C. 7:27-24.4) to which the manufacturer's product belongs or, if the manufacturer manufactures multiple products which belong to more than one chemically formulated consumer product category, a list of the chemically formulated consumer product categories to which the products belong (for example: adhesive, floor polish or wax, insecticide); and

v. If the manufacturer is, for any product, complying with the requirements of this subchapter through one of the exemptions listed at N.J.A.C. 7:27-24.4(i), the following:

- (1) Product brand name;
- (2) The chemically formulated consumer product category to which the product belongs;
- (3) The type of exemption; that is, IPE, ACP, or variance; and
- (4) The state that previously approved the IPE, ACP, or variance and the issuing state's approval date.

(b) Notwithstanding N.J.A.C. 7:27-24.3(c), any information submitted as part of the registration or re-registration pursuant to (a) above and (e) below may not be claimed to be confidential, including under the procedures set forth at N.J.A.C. 7:27-1.6 through 1.29.

(c) If a manufacturer seeks approval to submit its registration or re-registration on paper, rather than electronically, the following apply:

1. The manufacturer shall submit the written request to the address given at N.J.A.C. 7:27-24.3(d), and the envelope in which the written request is submitted shall be labeled as follows: "Attention: Request for On-Paper Submittal of Consumer Product Registration";

2. The written request shall include an explanation of the hardship that electronic submission would impose on the manufacturer; and

3. The Department shall not approve a manufacturer's written request to submit its registration on paper unless the Department is satisfied that electronic submission would impose hardship on the manufacturer.

(d) Except as provided at (f) below, a manufacturer of a chemically formulated consumer product subject to this subchapter pursuant to N.J.A.C. 7:27-24.2(b)1 shall clearly display, on each product package, the day, month, and year in which the product was manufactured, or a code indicating such date (that is, a date-code). The date or date-code shall be located on the packaging, or inside the cover or cap, so that it is readily observable or obtainable without disassembling any part of the packaging, such as by simply removing the cover or cap.

(e) If for any consumer product, the manufacturer uses a date-code to comply with (d) above, the manufacturer shall submit an explanation of the date-code to the Department. The explanation shall be submitted with the electronic registration or re-registration, in accordance with the requirements of (a), (b) and (c) above.

(f) Subsection (d) above does not apply to a product if:

- 1. The product contains no VOC; or contains 0.10 percent VOC, or less, by weight;
- 2. The product is offered to consumers free of charge for the purpose of sampling the product; or
- 3. The product's label is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. §136-136y).

(g) For aerosol adhesive products manufactured on or after January 1, 2005, the manufacturer shall ensure that:

1. The following information shall be clearly displayed on each product package:

- i. The name (as given in Table 1 at N.J.A.C. 7:27-24.4(a)) of the specific aerosol adhesive category to which the product belongs (for example, automobile headliner adhesive) or, an abbreviation of the name of the category;

ii. The applicable VOC content standard to which the product is subject, under Table 1 at N.J.A.C. 7:27-24.4(a), expressed as a percentage by weight; and

iii. If the product is a special purpose spray adhesive, the applicable substrate and/or application that qualifies the product as a special purpose spray adhesive, or an abbreviation of the substrate and/or application;

2. If abbreviation(s) are used, as allowed under (g)1i and iii above, an explanation of the abbreviation shall be submitted electronically with the electronic registration or re-registration; and

3. The information required under (g)1 above shall be displayed on the product packaging such that it is readily observable without removing or disassembling any portion of the product packaging. For the purposes of this subsection, information may be displayed on the bottom of a package as long as it is clearly legible without removing any product packaging.

(h) For floor wax strippers which are non-aerosol products manufactured on or after January 1, 2005:

1. The manufacturer shall ensure that:

i. The label specifies a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of three percent or less by weight; and

ii. If the floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label specifies a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of 12 percent or less by weight; and

2. The terms "light build-up," "medium build-up" or "heavy build-up" are not specifically required to be used on the label, as long as comparable terminology is used.

(i) No person shall erase, alter, deface, or otherwise remove or make illegible any information required to be displayed on any product packaging under (d), (g) or (h) above, prior to the final sale of the product to a consumer.

7:27-24.6 Chemically formulated consumer products: recordkeeping and reporting.

(a) Each manufacturer of a chemically formulated consumer product subject to this subchapter pursuant to N.J.A.C. 7:27-24.2(b)1 shall keep the following records:

1. The results of any testing performed to demonstrate compliance with a VOC content limit;

2. If compliance with a VOC content limit is demonstrated through calculation of the VOC content of the product pursuant to N.J.A.C. 7:27-24.7(b), the data and formulas used in the calculation, the calculations made, and the result of the calculation; and

3. Any information that may be required to be submitted to the Department pursuant to (b)3 below.

(b) The Department may require the manufacturer of a chemically formulated consumer product subject to this subchapter pursuant to N.J.A.C. 7:27-24.2(a) to submit information which may include the following:

1. The name, address, and telephone number of the manufacturer and the name and telephone number of the manufacturer's designated contact person;

2. Any claim of confidentiality asserted by the manufacturer pursuant to N.J.A.C. 7:27-24.3(c) for information required to be submitted to the Department regarding any of the manufacturer's products;

3. For any of the manufacturer's products subject to the standards in Table 1 at N.J.A.C. 7:27-24.4(a), the following information (if the product is sold in more than one form, this information shall be provided separately for each product form):

- i. The product brand name;
- ii. The product label;
- iii. The chemically formulated consumer product category to which the product belongs;
- iv. The form (if applicable) of the product, and a list of all the forms in which the product is sold;
- v. Identification of the product as a household product, institutional product, or both;

vi. Sales of the product within the State, given to the nearest pound in pounds of product (not including the weight of packaging) per year, and the method used to calculate the sales; and

vii. For each product, the net percent by weight of the total product less packaging, comprised of the following, rounded to the nearest one-tenth of a percent (0.1 percent):

- (1) Total VOC;
- (2) Total of carbon-containing compounds excluded from the definition of "VOC," as defined at N.J.A.C. 7:27-24.1;
- (3) Total LVP-VOCs that are not fragrances;
- (4) Total of all other carbon-containing compounds that are not fragrances;
- (5) Total of all non-carbon-containing compounds;
- (6) Total fragrances; and
- (7) Total paradichlorobenzene;

viii. For each product containing greater than two percent by weight fragrance:

- (1) The percent of fragrance that are LVP-VOCs; and
- (2) The percent of fragrance that are all other carbon-containing compounds; and

ix. For a product that is an antiperspirant or deodorant and that contains greater than two percent by weight colorant, the following:

- (1) Total LVP-VOCs in the colorant; and
- (2) Total of all other carbon-containing compounds in the colorant;

x. For each product, the identity, including the specific chemical name and associated Chemical Abstract Services (CAS) number, of the following:

- (1) Each compound excluded from the definition of "VOC," as set forth at N.J.A.C. 7:27-24.1; and

- (2) Each LVP-VOC that is not a fragrance; and

xi. If the product includes a propellant, the following:

- (1) The weight of the propellant, given as a percentage of the weight of the product sold, not including packaging, rounded to the nearest one-tenth of a percent (0.1 percent); and

- (2) Identification of the type of propellant (Type A, Type B, Type C, or a blend of the different types).

(c) Each manufacturer of a chemically formulated consumer product subject to this subchapter pursuant to N.J.A.C. 7:27-24.2(c) shall maintain calendar year records of products containing greater than five percent by weight VOC, having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (one millimeter of mercury) absolute or greater, measured at standard conditions, produced by that manufacturer for sale in New Jersey. Different forms of a product that have VOC contents within a range of five percent by weight may be combined as a single type of product for the purpose of this recordkeeping, provided the maximum weight percent and maximum weight per unit within the product category is recorded. For each product the following calendar year records shall be maintained:

The number of units produced;

2. The product's VOC content by weight per unit and percent weight; and

3. The approximate number of units sold in New Jersey.

(d) Records sufficient to provide the information required pursuant to (a)*, (b) and (c)*1 and 2* above shall be maintained by each manufacturer for five years after each calendar year for which the data is collected. *Records sufficient to provide the information required pursuant to (a)3, (b) and (c) above shall be maintained by each manufacturer for three years after each calendar year for which the data is collected.*

(e) Within 90 days of receipt of a written request by the Department, each manufacturer or distributor of a chemically formulated consumer product subject to this subchapter shall submit the requested information specified in (a), (b) or (c) above to the Department.

(f) A person who holds for sale, offers for sale, or sells any chemically formulated consumer product subject to this subchapter shall, within 30 days of receipt of a written request, identify the distributor, manufacturer, or other person from whom the consumer product was obtained to the Department.

(g) Within 30 days of a receipt of the Department's written request, the manufacturer of a charcoal lighter material product shall submit to the Department:

1. Documentation for the product's certification issued by CARB or the air pollution agency of another state in accordance with N.J.A.C. 7:27-24.4(h); and

2. Any conditions of approval established by the agency that issued the certification.

(h) If the Department requests in writing that any manufacturer of a chemically formulated consumer product test any of its products that are sold, offered for sale, held for sale, distributed, supplied, or manufactured for sale in New Jersey to determine the VOC content of the product, the manufacturer shall submit the test report to the Department within 60 days of the manufacturer's receipt of the written request.

(i) For any record required to be kept or reported in accordance with this section, or that is used or relied on in accordance with this subchapter, no person shall create, alter, falsify, or otherwise modify such record, in such a way that the record does not accurately reflect the information it purports to present (for instance, the amount of product produced, the constituents used to manufacture a product, or the chemical composition of the individual product).

(j) IPE, ACP, and variance documentation shall be submitted to the Department in accordance with N.J.A.C. 7:27-24.4(j)5 and (k).

7:27-24.7 Chemically formulated consumer products: testing

(a) Upon the written request of the Department, any manufacturer of a chemically formulated consumer product subject to the requirements of this subchapter shall test any of its products that are sold, offered for sale, held for sale, distributed, supplied, or manufactured for sale in New Jersey to determine the VOC content of the product (or in the case of charcoal lighter material, its emissions per start). Such testing shall be performed utilizing the test methods in (b) through (g) below, as applicable.

(b) Testing to determine compliance with the VOC content limits at N.J.A.C. 7:27-24.4(a) shall be performed using:

1. CARB Method 310, Determination of Volatile Organic Compounds (VOC) in Consumer Products, adopted September 25, 1997, amended September 3, 1999, including subsequent revisions, incorporated by reference herein; or

2. An alternative method which is shown to accurately determine the concentration of VOCs in a product. Such methods must first be approved in writing by the Department and EPA.

(c) Compliance with a VOC content limit at N.J.A.C. 7:27-24.4(a) may also be demonstrated through calculation of the VOC content of a consumer product from records of the amounts of constituents used to make the product (excluding packaging), pursuant to the following criteria:

1. Compliance determinations based on these records may not be used unless the manufacturer of a chemically formulated consumer product keeps, for each day of production, accurate records of the amount and chemical composition of the individual product constituents. These records must be kept for at least *three* *five* years;

2. For the purposes of this subsection, the VOC content of a product shall be calculated according to the following equation:

$$\text{VOC Content} = \frac{(B-C)}{A} \times 100$$

where,

A = total net weight of a unit of product (excluding any packaging);

B = total weight of all VOCs in the constituents used to make the product, per unit;

C = total weight of VOCs exempted under N.J.A.C. 7:27-24.4(e), per unit; and

3. If the calculations for VOC content based on product records appear to demonstrate compliance with the VOC limits, but these calculations are contradicted by the results of product testing performed using CARB Method 310, the results of CARB Method 310 shall take precedence over the calculations based on product records and may be used to establish a violation of the requirements of the VOC content limits set forth in this subchapter.

(d) Testing to determine whether a product is a liquid or a solid shall be performed using ASTM D4359-90 (reapproved June, 2000), "Standard Test Method for Determining Whether a Material is a Liquid or a Solid," including subsequent revisions, which is incorporated by reference herein.

(e) Testing to determine compliance with the standards for charcoal lighter material shall be performed using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991), including subsequent revisions, which is incorporated by reference herein.

(f) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D86-90 (Sept. 28, 1990), including subsequent revisions, which is incorporated by reference herein.

(g) Testing to determine whether a material is a "plasticizer" may be determined using ASTM Method E260-91, including subsequent revisions, which is incorporated by reference herein.

(h) The Department may require any manufacturer that is required to perform testing pursuant to (a) above to provide to the Department product samples that are duplicates of the samples tested.

(i) Test methods can be obtained as follows:

1. ASTM test methods can be purchased from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; Telephone (610) 832-9585; Fax (610) 832-9555; or ASTM test methods can be purchased from the ASTM website at <http://www.ASTM.org>;

2. SCAQMD test methods can be purchased from the South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, California 91765-0934; Telephone (909) 396-2162;

3. CARB Method 310 is available on the web at <http://www.arb.ca.gov/testmeth/cptm/cptm.htm>.

7:27-24.8 Portable fuel containers and spill proof spouts: standards

(a) Except as provided at N.J.A.C. 7:27-24.2(e), no person shall sell, offer for sale, hold for sale, distribute, supply, or manufacture for sale in New Jersey on or after January 1, 2005, any portable fuel container or any portable fuel container and spout which, at the time of sale or manufacture, does not meet all of the following performance standards for spill-proof systems:

1. Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows;

2. Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel;

3. Has only one opening for both filling and pouring; and

4. Provides a fuel flow rate and fill level of:

i. Not less than one-half gallon per minute for portable fuel containers with a nominal capacity of:

(1) Less than or equal to 1.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening; or

(2) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening if the spill-proof system clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on each spill-proof system or label affixed thereto, and on the accompanying package, if any;

ii. Not less than one gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or

iii. Not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons;

5. Does not exceed a permeation rate of 0.4 grams per gallon per day; and

6. Is warranted by the manufacturer for a period of not less than one year against defects in materials and workmanship.

(b) Except as provided at N.J.A.C. 7:27-24.2(e), no person shall sell, offer for sale, hold for sale, distribute, supply, or manufacture for sale in New Jersey on or after January 1, 2005, any spout which, at the time of sale or manufacture, does not meet all of the following performance standards for spill-proof spouts:

1. Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows;

2. Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel;

3. Provides a fuel flow rate and fill level of:

i. Not less than one-half gallon per minute for portable fuel containers with a nominal capacity of:

(1) Less than or equal to 1.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening; or

(2) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening if the spill-proof spout clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto;

ii. Not less than one gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or

iii. Not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons; and

4. Is warranted by the manufacturer for a period of not less than one year against defects in materials and workmanship.

(c) Notwithstanding the provisions of (a) and (b) above, a portable fuel container or spout or both portable fuel container and spout manufactured before January 1, 2005 may be sold, offered for sale, held for sale, distributed, or supplied for sale until January 1, 2006 if the date of manufacture or a date-code representing the date of manufacture is clearly displayed on the portable fuel container or spout and on the packaging (if any) in which it is sold. The date of manufacture or date-code shall be located so that it is readily observable without disassembling any part of the packaging (if any). If the manufacturer uses a date-code to comply with this subsection, the manufacturer shall electronically register the product, including an explanation of the date-code, in accordance with the requirements at N.J.A.C. 7:27-24.10(c).

(d) The provisions of (a), (b) and (c) above shall not apply to a spout, portable fuel container, or portable fuel container and spout if:

1. The spout, portable fuel container, or portable fuel container and spout has been granted an IPE or variance by CARB or by the air pollution control agency of another state that has adopted a portable fuel container rule based on or substantially equivalent to the Ozone Transport Commission (OTC) "Model Rule for Portable Fuel Container Spillage Control" dated March 6, 2001, including subsequent revisions accessible at the OTC's website <http://www.sso.org/otc/Publications/pub2.htm>; and

2. The IPE or variance is valid for use in New Jersey pursuant to (e) below.

(e) The IPE or variance in (d) above shall not be valid for use in New Jersey to comply with this subchapter unless:

1. The IPE or variance is currently in effect (the Department shall consider an IPE or variance in effect if the issuing agency deems the IPE or variance to be in effect);

2. The product for which the IPE or variance is being claimed is the same product for which the IPE or variance was issued by the issuing agency;

3. For an IPE, the manufacturer has demonstrated to the issuing agency by clear and convincing evidence that, due to the product's design, delivery system, or other factors, the use of the product will result in cumulative VOC emissions below the highest emitting representative spill-proof system or representative spill-proof spout in its portable fuel container product category as determined from applicable testing;

4. For a variance, the requirements at N.J.A.C. 7:27-24.4(j)3 are met; and

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5. The manufacturer has submitted to the Department, in accordance with (f) below, the following:

i. A statement that, for a specified product that it manufactures, it intends to comply with this section under an IPE or variance rather than meet the applicable standards;

ii. The product brand name;

iii. A copy of the document(s) setting forth the IPE or variance, the issuing agency's approval, the issuing agency's conditions of approval, the manufacturer's documentation demonstrating compliance with the IPE or variance conditions, and any documents from the issuing agency that subsequently modify or terminate its conditions of approval;

iv. If an IPE, the demonstration of (e)3 above;

v. If a variance, documents that substantiate the manufacturer's claim of extraordinary economic hardship;

vi. The name of the state that previously approved the IPE or variance and the issuing-state's approval date; and

vii. A statement that the IPE or variance, as well as the product for which the IPE or variance is being used, conforms with (e)1 through 4 above.

(f) Any submittal pursuant to (e)5 above shall be sent to the address given at N.J.A.C. 7:27-24.3(d) and the envelope or package shall be labeled as follows: "Attention: Portable Fuel Container Innovative Product Exemption" or "Attention: Portable Fuel Container Variance," whichever is applicable.

7:27-24.9 Portable fuel containers and spill proof spouts: labeling

(a) On and after January 1, 2005, a manufacturer of a spout, a portable fuel container, or a portable fuel container and spout that is subject to this subchapter pursuant to N.J.A.C. 7:27-24.2(b) shall clearly label the product as follows:

1. The following shall be displayed on a portable fuel container or on a portable fuel container and spout:

i. The phrase "Spill-Proof System" to mean that the product meets the applicable standards at N.J.A.C. 7:27-24.8;

ii. A date or date-code indicating the product's date of manufacture; and

iii. A representative code;

2. The following shall be displayed on a portable fuel container or on a portable fuel container and spout, or label, and on any accompanying package:

i. The product's flow rate (that is, the minimum rate at which the container-and-spout dispenses fuel); and

ii. If due to its design or other feature the portable fuel container and spout cannot be used to refuel an on-road motor vehicle, the phrase "Not Intended For Refueling On-Road Motor Vehicles" in type 34 point or greater;

3. The following shall be displayed on a spout's accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label:

i. The phrase "Spill-Proof Spout" to connote that, when used with a compatible fuel container, the spout meets the applicable standards at N.J.A.C. 7:27-24.8;

ii. A date or date-code indicating the spout's date of manufacture;

iii. A representative code; and

iv. The make, model number, and size of only those portable fuel container(s) the spout is designed to accommodate and can demonstrate compliance with N.J.A.C. 7:27-24.8; and

4. The following shall be displayed on a spill-proof spout, or label, and on any accompanying package:

i. The spout's minimum flow rate (that is, the minimum rate at which the spout dispenses fuel); and

ii. If due to its design or other feature the spout cannot be used to refuel an on-road motor vehicle, the phrase "Not Intended For Refueling On-Road Motor Vehicles" in type 34 point or greater.

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(b) Manufacturers of portable fuel containers or portable fuel containers and spouts not subject to or not in compliance with the applicable standards in N.J.A.C. 7:27-24.8, may not display the phrase "Spill-Proof Spout" or "Spill-Proof System" on the portable fuel container or spout on any sticker affixed thereto, on any label, or on any accompanying package.

7:27-24.10 Portable fuel containers and spill proof spouts: recordkeeping and reporting

(a) On or after January 1, 2005, the manufacturer of a spout, a portable fuel container, or a portable fuel container and spout who is required to perform compliance testing pursuant to N.J.A.C. 7:27-24.11(a) shall:

1. Maintain a record of the results of the compliance testing, whether performed before or after January 1, 2005, for as long as the spout, portable fuel container, or portable fuel container and spout is offered for sale, held for sale, sold, or otherwise supplied for household use or institutional use in New Jersey; and

2. Make the test results available to the Department within 60 days of the manufacturer's receipt of a written request from the Department.

(b) Manufacturers shall submit IPE and variance documentation to the Department in accordance with N.J.A.C. 7:27-24.8(e)5 and (f).

(c) If the manufacturer uses a date-code on a product or its packaging, the manufacturer shall electronically register or re-register the product with the Department by following the procedure at N.J.A.C. 7:27-24.5(a)1 and 2, (b) and (c), and by following (d) through (g) below.

(d) The registration or re-registration shall include the following information:

1. The name of the manufacturer;

2. The full mailing address of the manufacturer;

3. The name and telephone number of a contact person;

4. Whether the product is a spout, portable fuel container, or portable fuel container and spout;

5. If the manufacturer is, for any product, complying with the requirements of this subchapter through one of the exemptions listed at N.J.A.C. 7:27-24.8(d), the following:

i. The name of the product;

ii. Whether the product is a spout, a portable fuel container, or a portable fuel container and spout; and

iii. The type of exemption;

6. An explanation of the date-code; and

7. An explanation of the representative code.

(e) The registration shall be submitted in accordance with the following schedule:

1. For a spout, portable fuel container, or portable fuel container and spout sold in New Jersey prior to January 1, 2005, the registration shall be submitted on or after *[(the operative date of these amendments)]* *June 6, 2004* and prior to January 1, 2005; and

2. For a spout, portable fuel container, or portable fuel container and spout sold in New Jersey on or after January 1, 2005, that was not sold in New Jersey prior to January 1, 2005, the registration shall be submitted prior to selling the product in New Jersey.

(f) Each manufacturer subject to registration shall re-register the product within 90 days after any change in coding of the date-code or representative code.

(g) If a manufacturer seeks approval to submit its registration or re-registration on paper, rather than electronically, the following apply:

1. The manufacturer shall submit the written request to the address given at N.J.A.C. 7:27-24.3(d), and the envelope in which the written request is submitted shall be labeled as follows: "Attention: Request for On-Paper Submittal of Portable Fuel Container Registration";

2. The written request shall include an explanation of the hardship that electronic submission would impose on the manufacturer; and

3. The Department shall not approve a manufacturer's written request to submit its registration on paper unless the Department is satisfied that electronic submission would impose hardship on the manufacturer.

7:27-24.11 Portable fuel containers and spill proof spouts: testing

(a) The manufacturer of a spout, or the manufacturer of a portable fuel container and spout, shall perform compliance testing, using the test methods listed in (b) below, prior to allowing the spout or portable fuel container and spout to be distributed, offered for sale, held for sale, sold or otherwise supplied for household use or institutional use in New Jersey. The compliance testing shall demonstrate that the spout, together with each portable fuel container with which it is compatible, or the portable fuel container and spout, meet the applicable requirements at N.J.A.C. 7:27-24.8(a) and (b), and, therefore, qualify as a "spill-proof system" or a "spill-proof spout," as applicable.

(b) A manufacturer of a spout for a portable fuel container, or the manufacturer of a portable fuel container and spout, shall use the following test methods in performing the testing required at (a) above, unless the manufacturer obtains the Department's approval in writing to use alternative test method(s) pursuant to (c) below:

1. "Test Method 510, Automatic Shut-off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts," adopted by CARB on July 6, 2000, including subsequent revisions, incorporated by reference herein;

2. "Test Method 511, Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts," adopted by CARB on July 6, 2000, including subsequent revisions, incorporated by reference herein;

3. "Test Method 512, Determination of Fuel Flow Rate for Spill-Proof Systems and Spill-Proof Spouts," adopted by CARB on July 6, 2000, including subsequent revisions, incorporated by reference herein; and

4. "Test Method 513, Determination of Permeation Rate For Spill-Proof Systems," adopted by CARB on July 6, 2000, including subsequent revisions, incorporated by reference herein.

(c) A manufacturer may submit a written request to the Department for approval to use an alternate test method other than one given in (b) above, in order to demonstrate compliance with the applicable standards in N.J.A.C. 7:27-24.8(a) and (b). The Department shall not approve use of any such alternate test method unless the alternate test method has been approved in writing by the Department and the EPA and unless the manufacturer demonstrates, to the satisfaction of the Department and the EPA, that the alternate method is at least as accurate, precise, and appropriate as the test method given in (b) above, for which it would be substituted. A written request for Department approval to use an alternate test method pursuant to this subsection shall be addressed to:

Attn: Portable Fuel Container Test Method
Bureau of Technical Services
New Jersey Department of Environmental Protection
PO Box 437
380 Scotch Road
West Trenton, New Jersey 08625-0437

7:27-24.12 Penalties and other requirements imposed for failure to comply

(a) Any person subject to this subchapter shall be responsible for ensuring compliance with all requirements of this subchapter. Failure to comply with any provision of this subchapter may subject the person to civil penalties in accordance with N.J.A.C. 7:27A-3 and to applicable criminal penalties, including, but not limited to, those set forth at N.J.S.A. 26:2C-19(f).

(b) If a chemically formulated consumer product subject to this subchapter does not comply with the applicable VOC content requirements at N.J.A.C. 7:27-24.4, the Department may issue an order including, but not limited to, any or all of the following:

1. Requiring the product's manufacturer to:

i. Demonstrate to the satisfaction of the Department that the test results or calculations are in error, and that the product in fact complies with the applicable VOC content requirements at N.J.A.C. 7:27-24.4;

ii. Demonstrate to the satisfaction of the Department that the test results or calculations for that specific unit are not representative of the entire batch, or entire product line of that unit; and/or

iii. Within 30 days of the manufacturer's submission of the test report to the Department, recall its non-complying product from all retail outlets in New Jersey;

2. Requiring any distributor or supplier of the product to assist in a recall taking back any of the product it has distributed or supplied to a retail outlet; and/or

3. Prohibiting the sale of the product in New Jersey until the manufacturer makes a demonstration to the satisfaction of the Department that the product to be sold will meet the applicable VOC content requirements at N.J.A.C. 7:27-24.4.

(c) If a spout, portable fuel container, or portable fuel container and spout subject to this subchapter fails to comply with the applicable requirements at N.J.A.C. 7:27-24.8, the Department may issue an order including, but not limited to, any or all of the following:

1. Requiring the product's manufacturer to:

i. Demonstrate to the satisfaction of the Department that the test results or calculations are in error, and that the product in fact complies with the applicable requirements at N.J.A.C. 7:27-24.8;

ii. Demonstrate to the satisfaction of the Department that the test results or calculations for that specific unit are not representative of the entire batch, or entire product line of that unit; and/or

iii. Within 30 days of the manufacturer's submission of the test report to the Department, recall its non-complying product from all retail outlets in New Jersey;

2. Requiring any distributor or supplier of the product to assist in a recall taking back any of the product it has distributed or supplied to a retail outlet; and/or

3. Prohibiting the sale of the product in New Jersey until the manufacturer demonstrates to the satisfaction of the Department that the product to be sold will meet the applicable requirements at N.J.A.C. 7:27-24.8.

CHAPTER 27A**AIR ADMINISTRATION PROCEDURES AND PENALTIES****SUBCHAPTER 3. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS****7:27A-3.10 Civil administrative penalties for violation of rules adopted pursuant to the Act**

(a)-(l) (No change.)

(m) The violations of N.J.A.C. 7:27 and the civil administrative penalty amounts for each violation are as set forth in the following Civil Administrative Penalty Schedule. The numbers of the following subsections correspond to the numbers of the corresponding subchapter in N.J.A.C. 7:27. The rule summaries for the requirements set forth in the Civil Administrative Penalty Schedule in this subsection are provided for informational purposes only and have no legal effect.

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CIVIL ADMINISTRATIVE PENALTY SCHEDULE

1.-23. (No change.)

24. Civil administrative penalties for each violation of N.J.A.C. 7:27-24. Control of Air Pollution from Consumer Products, are as set forth in the following table:

<u>Citation and Rule Summary</u>	<u>Class</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	<u>Fourth and Each Subsequent Offense</u>
N.J.A.C. 7:27-24.3(b) Distributor identification and shipping documentation availability	Manufacturer, Distributor, Seller	\$ 8,000	\$16,000	\$40,000	\$50,000
[N.J.A.C. 7:27-24.3(e) Shipping documentation compliance statement]	*[Manufacturer, Distributor, Seller]*	*[\$ 4,000]*	*[\$ 8,000]*	*[\$20,000]*	*[\$50,000]*
N.J.A.C. 7:27-24.4(a) VOC standards (Per unit-eight pounds or any part thereof)					
N.J.A.C. 7:27-24.4(a) Less than 25 percent over the standard	Manufacturer, Distributor, Seller	\$300.00	\$600.00	\$ 1,500	\$ 4,500
N.J.A.C. 7:27-24.4(a) From 25 through 50 percent over the allowable standard	Manufacturer, Distributor, Seller	\$600.00	\$ 1,200	\$ 3,000	\$ 9,000
N.J.A.C. 7:27-24.4(a) Greater than 50 percent over the allowable standard	Manufacturer, Distributor, Seller	\$ 1,000	\$ 2,000	\$ 5,000	\$15,000
N.J.A.C. 7:27-24.4(h) Charcoal lighter product requirements	Manufacturer	\$500.00	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-24.4(j) IPE, ACP and variance requirements	Manufacturer	\$500.00	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-24.4(l) Toxic content in aerosol adhesive	Manufacturer, Distributor, Seller	\$500.00	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-24.4(m) VOC content in aerosol adhesive	Manufacturer, Distributor, Seller	\$500.00	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-24.5(a) Registration requirements	Manufacturer	\$500.00	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-24.5(d) Date or date-code requirement	Manufacturer	\$ 2,000	\$ 4,000	\$10,000	\$30,000
N.J.A.C. 7:27-24.5(e) Date-code registration	Manufacturer	\$500.00	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-24.5(g) Information on aerosol adhesive products after 1/1/05	Manufacturer	\$500.00	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-24.5(h) Floor wax stripper products after 1/1/05	Manufacturer	\$ 2,000	\$ 4,000	\$10,000	\$30,000
N.J.A.C. 7:27-24.5(i) Defacing of label	Manufacturer, Distributor, Seller	\$ 2,000	\$ 4,000	\$10,000	\$30,000
N.J.A.C. 7:27-24.6(a) Recordkeeping for chemically formulated products subject to VOC limits	Manufacturer	\$ 4,000	\$ 8,000	\$20,000	\$50,000
N.J.A.C. 7:27-24.6(b) Submit information on product	Manufacturer	\$ 4,000	\$ 8,000	\$20,000	\$50,000
N.J.A.C. 7:27-24.6(c) Recordkeeping for chemically formulated products not subject to VOC limits	Manufacturer	\$ 1,000	\$ 2,000	\$ 5,000	\$15,000
N.J.A.C. 7:27-24.6(d) Keep records for 5 years	Manufacturer	\$ 4,000	\$ 8,000	\$20,000	\$50,000
N.J.A.C. 7:27-24.6(e) Submit information upon written request	Manufacturer, Distributor	\$ 4,000	\$ 8,000	\$20,000	\$50,000
N.J.A.C. 7:27-24.6(f) Distributor identification	Manufacturer, Distributor, Seller	\$ 8,000	\$16,000	\$40,000	\$50,000
N.J.A.C. 7:27-24.6(g) Charcoal lighter product records submittal	Manufacturer	\$ 4,000	\$ 8,000	\$20,000	\$50,000

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N.J.A.C. 7:27-24.6(h) Submit results from testing	Manufacturer	\$ 1,000	\$ 2,000	\$ 5,000	\$15,000
N.J.A.C. 7:27-24.6(i) Falsification of records	Manufacturer, Distributor, Seller	\$10,000	\$25,000	\$50,000	\$50,000
N.J.A.C. 7:27-24.6(j) IPE, ACP, and variance documentation	Manufacturer	\$ 1,000	\$ 2,000	\$ 5,000	\$15,000
N.J.A.C. 7:27-24.7(a) Testing of the product	Manufacturer	\$ 2,000	\$ 4,000	\$10,000	\$30,000
N.J.A.C. 7:27-24.8(a) Fuel container requirements	Manufacturer, Distributor, Seller	\$300.00	\$600.00	\$ 1,500	\$ 4,500
N.J.A.C. 7:27-24.8(b) Fuel container and spout requirements	Manufacturer, Distributor, Seller	\$300.00	\$600.00	\$ 1,500	\$ 4,500
N.J.A.C. 7:27-24.8(c) Sell through requirements for fuel containers	Manufacturer, Distributor, Seller	\$300.00	\$600.00	\$ 1,500	\$ 4,500
N.J.A.C. 7:27-24.8(e) IPE and variance requirements	Manufacturer	\$500.00	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-24.9(a) and (b) Labeling of fuel container	Manufacturer	\$ 2,000	\$ 4,000	\$10,000	\$30,000
N.J.A.C. 7:27-24.10(a) Recordkeeping for fuel containers	Manufacturer	\$ 4,000	\$ 8,000	\$20,000	\$50,000
N.J.A.C. 7:27-24.10(b) IPE and variance documentation	Manufacturer	\$ 1,000	\$ 2,000	\$ 5,000	\$15,000
N.J.A.C. 7:27-24.10(c) Date-code registration	Manufacturer	\$500.00	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-24.10(e) Registration schedule	Manufacturer	\$500.00	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-24.10(f) Register code change	Manufacturer	\$500.00	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-24.11(a) Testing of portable fuel containers	Manufacturer	\$ 2,000	\$ 4,000	\$10,000	\$30,000
N.J.A.C. 7:27-24.12(b) Order violation and recall of chemically formulated consumer products	Manufacturer, Distributor, Seller	\$10,000	\$25,000	\$50,000	\$50,000
N.J.A.C. 7:27-24.12(c) Order violation and recall of portable fuel containers/spouts	Manufacturer, Distributor, Seller	\$10,000	\$25,000	\$50,000	\$50,000
25.-31. (No change.)					
(n)-(p) (No change.)					

(a)

PINELANDS COMMISSION

Notice of Administrative Correction

Pinelands Comprehensive Management Plan

Application Fees

N.J.A.C. 7:50-1.6

Take notice that the Office of Administrative Law has discovered a spelling error in the text of N.J.A.C. 7:50-1.6(i)(6), adopted effective April 5, 2004 (see 35 N.J.R. 4411(a) and 36 N.J.R. 1804(a)). The word "destination" in the first sentence is a typographic misspelling of "estimation" (see PRN 2003-398). This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface thus; deletion indicated in brackets [thus]):

7:50-1.6 Fees

(a)-(h) (No change.)

(i) If the Executive Director determines that a development application, excluding an application for a minor residential development, involves complex issues which, because of the need for specialized expertise, necessitate the retention of consultants to assist in the review of such application:

1.-5. (No change.)

6. An applicant who objects to the escrow amount requested pursuant to (i)1 or 3 above, shall notify the Executive Director, in writing, within 15 days of receipt of the Executive Director's determination, of such objection and shall include with this notification an estimate from a qualified professional, having the requisite knowledge and expertise required to address the issues raised by the application, to support the applicant's [destination] estimation of the appropriate amount to be assessed. The Executive Director shall review the applicant's submission and notify the applicant within 10 days thereof, of the amount to be provided.